

Auto Industry Division

Study Guide **Motor Vehicle Statutes** **2017-2018**



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12-6-101. Legislative declaration

(1) The general assembly hereby declares that:

- (a)** The sale and distribution of motor vehicles affects the public interest and a significant factor of inducement in making a sale of a motor vehicle is the trust and confidence of the purchaser in the retail dealer from whom the purchase is made and the expectancy that such dealer will remain in business to provide service for the motor vehicle purchased;
- (b)** Proper motor vehicle service is important to highway safety and the manufacturers and distributors of motor vehicles have an obligation to the public not to terminate or refuse to continue their franchise agreements with retail dealers unless the manufacturer or distributor has first established good cause for termination or noncontinuance of any such agreement, to the end that there shall be no diminution of locally available service;
- (c)** The licensing and supervision of motor vehicle dealers by the motor vehicle dealer board are necessary for the protection of consumers and therefore the sale of motor vehicles by unlicensed dealers or salespersons, or by licensed dealers or salespersons who have demonstrated unfitness, should be prevented;
- (d)** Consumer education concerning the rules and regulations of the motor vehicle industry, the considerations when purchasing a motor vehicle, and the role, functions, and actions of the motor vehicle dealer board are necessary for the protection of the public and for maintaining the trust and confidence of the public in the motor vehicle dealer board; and
- (e)** Subject to the United States constitution and the Colorado constitution, this article applies to each sales, service, and parts agreement in effect, regardless of when the agreement was adopted.12-6-103. Motor vehicle dealer board

12-6-102. Definitions

As used in this part 1, and in part 5 of this article 6, unless the context or section 12-6-502 otherwise requires:

- (1)** "Advertise" or "advertisement" means any commercial message in any newspaper, magazine, leaflet, flyer, or catalog, on radio, television, or a public address system, in direct mail literature or other printed material, on any interior or exterior sign or display, in any window display, on a computer display, or in any point-of-transaction literature or price tag that is delivered or made available to a customer or prospective customer in any manner; except that the term does not include materials required to be displayed by federal or state law.
- (2)** "Board" means the motor vehicle dealer board.

- (3) "Business incidental thereto" means a business owned by the motor vehicle dealer or used motor vehicle dealer related to the sale of motor vehicles, including motor vehicle part sales, motor vehicle repair, motor vehicle recycling, motor vehicle security interest assignment, and motor vehicle towing.
- (4) (a) "Buyer agent" means any person required to be licensed pursuant to this part 1 who is retained or hired by a consumer for a fee or other thing of value to assist, represent, or act on behalf of the consumer in connection with the purchase or lease of a motor vehicle.
- (b) (i) "Buyer agent" does not include a person whose business includes the purchase of motor vehicles primarily for resale or lease; except that nothing in this subsection (4) prohibits a buyer agent from assisting a consumer regarding the disposal of a trade-in motor vehicle that is incident to the purchase or lease of a vehicle if the buyer agent does not advertise the sale of, or sell, the vehicle to the general public, directs interested dealers and wholesalers to communicate their offers directly to the consumer or to the consumer via the buyer agent, does not handle or transfer titles or funds between the consumer and the purchaser, receives no compensation from a dealer or wholesaler purchasing a consumer's vehicle, and identifies himself or herself as a buyer agent to dealers and wholesalers interested in the consumer's vehicle.
- (ii) A "buyer agent" licensed under this part 1 shall not be employed by or receive a fee from a person whose business includes the purchase of motor vehicles primarily for resale or lease, a motor vehicle manufacturer, a motor vehicle dealer, or a used motor vehicle dealer.
- (5) "Coerce" means to compel or attempt to compel by threatening, retaliating, or exerting economic force or by not performing or complying with any terms or provisions of the franchise or agreement; except that recommendation, exposition, persuasion, urging, or argument do not constitute coercion.
- (6) "Consumer" means a purchaser or lessee of a motor vehicle used for business, personal, family, or household purposes. "Consumer" does not include a purchaser of motor vehicles primarily for resale.
- (7) (a) "Custom trailer" means any motor vehicle that is not driven or propelled by its own power and is designed to be attached to, become a part of, or be drawn by a motor vehicle and that is uniquely designed and manufactured for a specific purpose or customer.
- (b) "Custom trailer" does not include manufactured housing, farm tractors, and other machines and tools used in the production, harvest, and care of farm products.
- (8) "Director" means the director of the auto industry division created in section 12-6-105.

- (9) "Distributor" means a person, resident or nonresident, who, in whole or in part, sells or distributes new motor vehicles to motor vehicle dealers or who maintains distributor representatives.
- (10) "Executive director" means the executive director of the department of revenue charged with the administration, enforcement, and issuance or denial of the licensing of buyer agents, distributors, manufacturer representatives, and manufacturers.
- (11) "Fire truck" means a vehicle intended for use in the extermination of fires, with features that may include a fire pump, a water tank, an aerial ladder, an elevated platform, or any combination thereof.
- (12) "Franchise" means the authority to sell or service and repair motor vehicles of a designated line-make granted through a sales, service, and parts agreement with a manufacturer, distributor, or manufacturer representative.
- (13) "Good faith" means the duty of each party to any franchise and all officers, employees, or agents thereof to act in a fair and equitable manner toward each other so as to guarantee the one party freedom from coercion, intimidation, or threats of coercion or intimidation from the other party. Recommendation, endorsement, exposition, persuasion, urging, or argument shall not be deemed to constitute a lack of good faith.
- (14) "Line-make" means a group or series of motor vehicles that have the same brand identification or brand name, based upon the manufacturer's trademark, trade name, or logo.
- (15) "Manufacturer" means any person, firm, association, corporation, or trust, resident or nonresident, who manufactures or assembles new and unused motor vehicles; except that "manufacturer" does not include:
- (a) A person who only manufactures utility trailers that weigh less than two thousand pounds and does not manufacture any other type of motor vehicle; and
 - (b) A person, other than a manufacturer operating a motor vehicle dealer in accordance with section 12-6-120.5, who is a licensed dealer selling motor vehicles that the person has manufactured.
- (16) "Manufacturer representative" means a representative employed by a person who manufactures or assembles motor vehicles for the purpose of making or promoting the sale of its motor vehicles or for supervising or contacting its dealers or prospective dealers.
- (17) "Motor vehicle" means every vehicle intended primarily for use on the public highways that is self-propelled and every vehicle intended primarily for operation on the public highways that is not self-propelled but is designed to be attached to, become a part of, or be drawn by a self-propelled vehicle, not including farm tractors and other machines and tools used in the

production, harvesting, and care of farm products. "Motor vehicle" includes a low-power scooter or auticycle as either is defined in section 42-1-102.

- (18) "Motor vehicle auctioneer" means any person, not otherwise required to be licensed pursuant to this part 1, who is engaged in the business of offering to sell, or selling, used motor vehicles owned by persons other than the auctioneer at public auction only. Any auctioning of motor vehicles by an auctioneer must be incidental to the primary business of auctioning goods.
- (19) "Motor vehicle dealer" means a person who, for commission or with intent to make a profit or gain of money or other thing of value, sells, leases, exchanges, rents with option to purchase, offers, or attempts to negotiate a sale, lease, or exchange of an interest in new or new and used motor vehicles or who is engaged wholly or in part in the business of selling or leasing new or new and used motor vehicles, whether or not the motor vehicles are owned by the person. The sale or lease of three or more new or new and used motor vehicles or the offering for sale or lease of more than three new or new and used motor vehicles at the same address or telephone number in any one calendar year is prima facie evidence that a person is engaged in the business of selling or leasing new or new and used motor vehicles. "Motor vehicle dealer" includes an owner of real property who allows more than three new or new and used motor vehicles to be offered for sale or lease on the property during one calendar year unless said property is leased to a licensed motor vehicle dealer. "Motor vehicle dealer" does not include:
- (a) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court;
 - (b) Public officers while performing their official duties;
 - (c) Employees of a motor vehicle dealer when engaged in the specific performance of their duties as employees;
 - (d) A wholesaler or anyone selling motor vehicles solely to wholesalers;
 - (e) Any person engaged in the selling of a fire truck; or
 - (f) A motor vehicle auctioneer.
- (20) "Motor vehicle salesperson" means a natural person who, for a salary, commission, or compensation of any kind, is employed either directly or indirectly, regularly or occasionally, by a motor vehicle dealer or used motor vehicle dealer to sell, lease, purchase, or exchange or to negotiate for the sale, lease, purchase, or exchange of motor vehicles.
- (21) "New motor vehicle" means a motor vehicle that has been transferred on a manufacturer's statement of origin and that has sufficiently low mileage to be considered new, as determined by the board.

- (22) "Person" means any natural person, estate, trust, Limited Liability Company, partnership, association, corporation, or other legal entity, including a registered limited liability partnership.
- (23) "Principal place of business" means a site or location devoted exclusively to the business for which the motor vehicle dealer or used motor vehicle dealer is licensed, and businesses incidental thereto, sufficiently designated to admit of definite description, with adequate contiguous space to permit the display of one or more new or used motor vehicles, with a permanent enclosed building or structure large enough to accommodate the office of the dealer and to provide a safe place to keep the books and other records of the business of the dealer, at which site or location the principal portion of the dealer's business shall be conducted and the books and records thereof kept and maintained; except that a dealer may keep its books and records at an off-site location in Colorado after notifying the board in writing of the location at least thirty days in advance.
- (24) "Recreational vehicle" means a camping trailer, fifth wheel trailer, motor home, recreational park trailer, travel trailer, or truck camper, all as defined in section 24-32-902, or multipurpose trailer, as defined in section 42-1-102.
- (25) "Sales, service, and parts agreement" means an agreement between a manufacturer, distributor, or manufacturer representative and a motor vehicle or powersports dealer authorizing the dealer to sell and service a line-make of motor or powersports vehicles or imposing any duty on the dealer in consideration for the right to have or competitively operate a franchise, including any amendments or additional related agreements thereto. Each amendment, modification, or addendum that materially affects the rights, responsibilities, or obligations of the contracting parties creates a new sales, service, and parts agreement.
- (26) "Site control provision" means an agreement that applies to real property owned or leased by a franchisee and that gives a motor vehicle or powersports vehicle manufacturer, distributor, or manufacturer representative the right to:
- (a) Control the use and development of the real property;
 - (b) Require the franchisee to establish or maintain an exclusive dealership facility at the real property; or
 - (c) Restrict the franchisee from transferring, selling, leasing, developing, or changing the use of the real property.
- (27) "Used motor vehicle dealer" means a person who, for commission or with intent to make a profit or gain of money or other thing of value, sells, exchanges, leases, or offers an interest in used motor vehicles, or attempts to negotiate a sale, exchange, or lease of used motor vehicles, or who is engaged wholly or in part in the business of selling used motor vehicles, whether or not the motor vehicles are owned by the person. The sale of three or more used motor vehicles or the offering for sale of more than three used motor vehicles at the same address or

telephone number in any one calendar year is prima facie evidence that a person is engaged in the business of selling used motor vehicles. "Used motor vehicle dealer" includes an owner of real property who allows more than three used motor vehicles to be offered for sale on the property during one calendar year unless said property is leased to a licensed used motor vehicle dealer. "Used motor vehicle dealer" does not include:

- (a) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court;
 - (b) Public officers while performing their official duties;
 - (c) Employees of a used motor vehicle dealer when engaged in the specific performance of their duties as employees;
 - (d) A wholesaler or anyone selling motor vehicles solely to wholesalers;
 - (e) Mortgagees or secured parties as to sales in any one year of not more than twelve motor vehicles constituting collateral on a mortgage or security agreement, if the mortgagees or secured parties do not realize for their own account any money in excess of the outstanding balance secured by the mortgage or security agreement, plus costs of collection;
 - (f) A person who only sells or exchanges no more than four motor vehicles that are collector's items under part 3 or 4 of article 12 of title 42;
 - (g) A motor vehicle auctioneer; or
 - (h) An operator, as defined in section 42-4-2102 (5), who sells a motor vehicle pursuant to section 42-4-2104.
- (28) "Wholesale motor vehicle auction dealer" means a person or firm that provides auction services in wholesale transactions in which the purchasers are motor vehicle dealers licensed by this state or any other jurisdiction or in consumer transactions of government vehicles at a time and place that does not conflict with a wholesale motor vehicle auction conducted by that licensee.
- (29) "Wholesaler" means a person who, for commission or with intent to make a profit or gain of money or other thing of value, sells, exchanges, or offers or attempts to negotiate a sale, lease, or exchange of an interest in new or new and used motor vehicles solely to motor vehicle dealers or used motor vehicle dealers.

12-6-103. Motor vehicle dealer board

- (1) There is hereby created and established the motor vehicle dealer board, consisting of nine members who have been residents of this state for at least five years, three of whom shall be licensed motor vehicle dealers, three of whom shall be licensed used motor vehicle dealers, and three of whom shall be members from the public at large. The members representing the public at large shall not have a present or past financial interest in a motor vehicle dealership. The

board shall assume its duties July 1, 1992, and all terms of the board members shall commence on that date. The terms of office of the board members shall be three years. Any vacancies shall be filled by appointment for the unexpired term.

- (2) All board members shall be appointed by the governor.
- (3) Each board member shall be reimbursed for actual and necessary expenses incurred while engaged in the discharge of official duties.

12-6-104. Board - oath - meetings - powers and duties - rules

- (1) Each member of the board, before entering on the discharge of such member's duties and within thirty days after the effective date of such member's appointment, shall subscribe an oath for the faithful performance of such member's duties before any officer authorized to administer oaths in this state and shall file the same with the secretary of state.
 - (2) The board shall annually in the month of July elect from the membership thereof a president, a first vice-president, and a second vice-president. The board shall meet at such times as it deems necessary. A majority of the board shall constitute a quorum at any meeting or hearing.
 - (3) The board is authorized and empowered:
 - (a) To promulgate, amend, and repeal rules reasonably necessary to implement this part 1, including the administration, enforcement, issuance, and denial of licenses to motor vehicle dealers, motor vehicle salespersons, used motor vehicle dealers, wholesale motor vehicle auction dealers, and wholesalers, and the laws of the state of Colorado;
 - (a.5) To delegate to the board's executive secretary, employed pursuant to section 12-6-105 (2)(b), the authority to execute all actions within the power of the board, carry out the directives of the board, and make recommendations to the board on all matters within the authority of the board;
 - (a.7) To issue through the department of revenue a temporary license to any person applying for any license issued by the board. The temporary license shall permit the applicant to operate for a period not to exceed one hundred twenty days while the board is completing its investigation and determination of all facts relative to the qualifications of the applicant for such license. A temporary license is terminated when the applicant's license is issued or denied.
- (b)&(c) (Deleted by amendment, L. 92, p. 1842, § 4, effective July 1, 1992.)
- (d) (I) To issue through the department of revenue and, for reasonable cause shown or upon satisfactory proof of the unfitness of the applicant under standards established and set forth in this part 1, to refuse to issue to any applicant any license the board is authorized to issue by this part 1;

- (II) To permit the executive director or the director to issue licenses pursuant to rules adopted by the board pursuant to subsection (3)(a) of this section;
- (e)
 - (I) After due notice and a hearing, to review the findings of an administrative law judge or a hearing officer from a hearing conducted pursuant to this part 1 to revoke and suspend or to order the director to issue or to reinstate, on such terms and conditions and for such period of time as to the board appear fair and just, any license issued under this part 1. The board may direct a letter of admonition for minor violations or may issue a letter of reprimand to any licensee for a violation of this part 1. A letter of admonition does not become a part of the licensee's record with the board. A letter of reprimand is a part of the licensee's record with the board for a period of two years after issuance and may be considered in aggravation of any subsequent violation by the licensee. When a letter of reprimand is sent to a licensee of the board, the licensee shall be notified in writing regarding the right to request in writing, within twenty days after receipt of such letter, that formal disciplinary proceedings be initiated against the licensee to adjudicate the propriety of the conduct upon which the letter of reprimand is based. If a request is made within the twenty-day period, the letter of reprimand is deemed vacated and the matter shall be processed by means of formal disciplinary proceedings.
 - (II) The findings of the board pursuant to subparagraph (I) of this paragraph (e) shall be final.
- (f)
 - (I) To investigate through the director, on its own motion or upon the written and signed complaint of any person, any suspected or alleged violation by a motor vehicle dealer, motor vehicle salesperson, used motor vehicle dealer, wholesale motor vehicle auction dealer, or wholesaler of any of the terms and provisions of this part 1 or of any rule promulgated by the board under the authority conferred upon it in this section. The board shall order an investigation of all written and signed complaints, may issue subpoenas, and may delegate the authority to issue subpoenas to the director, and the director shall make an investigation of all complaints transmitted by the board pursuant to section 12-6-105 (3). The board may seek to resolve disputes before beginning an investigation or hearing through its own action or by direction to the director.
 - (II) After an investigation by the director or the director's designee, if the board determines that there is probable cause to believe a violation of this article 6 has occurred, it may order that an administrative hearing be held pursuant to section 24-4-105.
- (f.5) To summarily issue cease-and-desist orders on such terms and conditions and for such period of time as to the board appears fair and just to any person who is licensed by the

board pursuant to this part 1 if such orders are followed by notice and a hearing pursuant to section 12-6-119;

- (g) To prescribe the forms to be used for applications for motor vehicle dealers', motor vehicle salespersons', used motor vehicle dealers', wholesale motor vehicle auction dealers', and wholesalers' licenses to be issued and to require of such applicants, as a condition precedent to the issuance of such licenses, such information concerning their fitness to be licensed under this part 1 as it may consider necessary. Every application for a motor vehicle dealer's license or used motor vehicle dealer's license shall contain, in addition to such information as the board may require, a statement of the following facts:
- (I) The name and residence address of the applicant and the trade name, if any, under which such applicant intends to conduct such applicant's business and, if the applicant is a copartnership, the name and residence address of each member thereof, whether a limited or general partner, and the name under which the partnership business is to be conducted and, if the applicant is a corporation, the name of the corporation and the name and address of each of its principal officers and directors;
 - (II) A complete description, including the city, town, or village, the street and number, if any, of the principal place of business, and such other and additional places of business as shall be operated and maintained by the applicant in conjunction with the principal place of business;
 - (III) If the application is for a motor vehicle dealer's license, the names of the new motor vehicles that the applicant has been enfranchised to sell or exchange and the name and address of the manufacturer or distributor who has enfranchised the applicant;
 - (IV) The names and addresses of the persons who shall act as salespersons under the authority of the license, if issued.
- (h) To adopt a seal with the words "motor vehicle dealer board" and such other devices as the board may desire engraved thereon by which it shall authenticate the acts of its office;
- (i) To require that a motor vehicle dealer's or used motor vehicle dealer's principal place of business and such other sites or locations as may be operated and maintained by such dealers in conjunction with their principal place of business have erected or posted thereon such signs or devices providing information relating to the dealer's name, the location and address of such dealer's principal place of business, the type of license held by the dealer, and the number thereof, as the board shall consider necessary to enable any person doing business with such dealer to identify such dealer properly, and for this

purpose to determine the size and shape of such signs or devices, the lettering thereon, and other details thereof and to prescribe rules and regulations for the location thereof;

- (j) (I) To conduct or cause to be conducted written examinations as prescribed by the board testing the competency of all first-time applicants for a motor vehicle dealer's license, motor vehicle salesperson's license, used motor vehicle dealer's license, wholesale motor vehicle auction dealer's license, or wholesaler's license;

(II)&(III) (Deleted by amendment, L. 98, p. 592, § 4, effective July 1, 1998.)

- (k) (I) To prescribe a form or forms to be used as a part of a contract for the sale of a motor vehicle by any motor vehicle dealer or motor vehicle salesperson, other than a retail installment sales contract subject to the provisions of the "Uniform Consumer Credit Code", articles 1 to 9 of title 5, C.R.S., which shall include the following information in addition to any other disclosures or information required by state or federal law:

- (A) In twelve-point bold-faced type or a size at least three points larger than the smallest type appearing in the contract, an instruction that the form is a legal instrument and that, if the purchaser of the motor vehicle does not understand the form, such purchaser should seek legal assistance;
- (B) In bold-faced type, of the size specified in sub-subparagraph (A) of this subparagraph (I), an instruction that only those terms in written form embody the contract for sale of a motor vehicle and that any conflicting oral representations made to the purchaser are void;
- (C) In bold-faced type, of the size specified in sub-subparagraph (A) of this subparagraph (I), a notice that fraud or misrepresentation in the sale of a motor vehicle is punishable under the laws of this state;
- (D) In bold-faced type, of the size specified in sub-subparagraph (A) of this subparagraph (I), if the contract for the sale of a motor vehicle requires a single lump sum payment of the purchase price, a clear disclosure to the purchaser of that fact or, if the contract is contingent upon the approval of credit financing for the purchaser arranged by or through the motor vehicle dealer, in bold-faced type, a statement that the purchaser shall agree to purchase the motor vehicle which is the subject of the sale from the motor vehicle dealer at not greater than a certain

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annual percentage rate of financing, which annual percentage rate of financing shall be agreed upon by the parties and entered in writing on the contract;

- (E)** Except as otherwise provided under part 1 of article 1 of title 6, C.R.S., where the purchase price of the motor vehicle is not paid to the motor vehicle dealer in full at the time of consummation of the sale and the purchaser and motor vehicle dealer elect that the motor vehicle dealer shall deliver and the purchaser shall take possession of such motor vehicle at such time, in bold-faced type, a statement that in the event financing cannot be arranged in accordance with the provisions stated in the contract, and the sale is not consummated, the purchaser shall agree to pay a daily rate and a mileage rate for use of the motor vehicle until such time as financing of the purchase price of such motor vehicle is arranged for the obligor by or through the authorized motor vehicle dealer or until the purchase price is paid to the authorized motor vehicle dealer in full by or through the obligor, which daily rate and mileage rate shall be specified and agreed upon by the parties and entered in writing on the contract;
- (II)** The information required by subparagraph (I) of this paragraph (k) shall be read and initialed by both parties at the time of the consummation of the sale of a motor vehicle;
- (III)** The use of the contract form required by subparagraph (I) of this paragraph (k) shall be mandatory for the sale of any motor vehicle;
- (IV)** The board may require a licensee to include with a consumer sales contract a written notice that provides to the consumer the contact information of the board and information about the board's authority over consumer motor vehicle sales.
- (I)** (Deleted by amendment, L. 98, p. 592, § 4, effective July 1, 1998.)
- (m) (I) (A)** After final action is taken on a hearing held before an administrative law judge or a hearing officer, to review the findings of law and fact and the fairness of any fine imposed and to uphold the fine, to impose an administrative fine upon its own initiative, not to exceed ten thousand dollars for each offense by any licensee, or to vacate the fine imposed by the judge or hearing officer; except that, for motor vehicle dealers who sell primarily motor vehicles that weigh under one

thousand five hundred pounds, the fine for each offense must not exceed one thousand dollars. Whenever a hearing is heard by an administrative law judge, the maximum fine that may be imposed is ten thousand dollars for each offense by any person licensed by the board under this part 1; except that, for motor vehicle dealers who sell primarily vehicles that weigh under one thousand five hundred pounds, the fine for each offense must not exceed one thousand dollars. Whenever a licensing hearing is conducted by a hearing officer, the sanctions that may be recommended by the hearing officer are limited to the denial or grant of an unrestricted license or a restricted license under such terms as the hearing officer deems appropriate. Whenever a disciplinary hearing is conducted by a hearing officer, the hearing officer may only recommend a probationary period of no more than twelve months, a fine of no more than five hundred dollars, or both a probationary period and fine for each violation committed by a person licensed by the board.

- (B)** The board shall promulgate rules regarding circumstances in which a board member should not act as a hearing officer in a particular matter before the board because of business competition issues connected with the parties involved in such matter.
- (II)** The findings of the board pursuant to subparagraph (I) of this paragraph (m) shall be final.
- (n)** (Deleted by amendment, L. 2007, p. 1578, § 4, effective July 1, 2007.)
- (o)**
 - (I)** To impose a fine of up to one thousand dollars per day per violation for any person found, after notice and hearing pursuant to section 24-4-105, C.R.S., to have violated the provisions of section 12-6-120 (2). For the purposes of this paragraph (o), the address for the notice to be given under section 24-4-105, C.R.S., is the last-known address for the person as indicated in the state motor vehicle records; the last-known address for the owner of the real property upon which motor vehicles are displayed in violation of section 12-6-120 (2) as indicated in the records of the county assessor's office; or an address for service of process in accordance with rule 4 of the Colorado rules of civil procedure.
 - (II)** Any person who fails to pay a fine ordered by the board for a violation of section 12-6-120 (2) under this paragraph (o) shall be subject to enforcement proceedings, by the board through the attorney general, in the county or district court pursuant to the Colorado rules of civil procedure. Any fines collected

under the provisions of this paragraph (o) shall be disposed of pursuant to section 12-6-123.

- (4) The board shall promulgate rules by January 1, 2008, establishing enforcement and compliance standards to ensure that administrative penalties are equitably assessed and commensurate with the seriousness of the violation.

12-6-105. Auto industry division - creation - powers and duties of executive director & director

- (1) There is hereby created in the department of revenue the auto industry division, the head of which is the director of the division. The director is appointed by the executive director of the department and serves at the pleasure of the executive director. The division shall exercise its powers and perform its duties and functions under the department as if the division were transferred to the department by a type 2 transfer as described in section 24-1-105.
- (2) The executive director is hereby charged with the administration, enforcement, and issuance or denial of the licensing of buyer agents, distributors, manufacturer representatives, and manufacturers, and has the following powers and duties:
- (a) To promulgate, amend, and repeal reasonable rules relating to those functions the executive director is mandated to carry out pursuant to this part 1 and the laws of the state of Colorado that the executive director deems necessary to implement this part 1;
 - (b) To employ, subject to the laws of the state of Colorado and after consultation with the board, an executive secretary for the board, who is accountable to the board and shall, pursuant to delegation by the board, discharge the responsibilities of the board under this part 1;
 - (c) To issue and, for reasonable cause shown or upon satisfactory proof of the unfitness of the applicant under standards established and set forth in this part 1, to refuse to issue to any applicant any license the executive director is authorized to issue by this part 1;
 - (d) To prescribe the forms to be used for applications for licenses to be issued by the executive director under this part 1 and to require of such applicants, as a condition precedent to the issuance of such licenses, such information concerning the applicant's fitness to be licensed under this part 1 as the executive director considers necessary;
 - (e)
 - (I) To summarily issue cease-and-desist orders on such terms and conditions and for such period of time as to the executive director appears fair and just to any person who is licensed by the executive director pursuant to this part 1 if such orders are followed by notice and a hearing pursuant to section 12-6-104 (3)(e)(I);
 - (II) To issue cease-and-desist orders to persons acting as manufacturers without the manufacturer's license required by this part 1; and

- (III) To impose a fine, not to exceed one thousand dollars per day, for each violation of section 12-6-120 (1) after a notice and hearing subject to section 24-4-105.
- (3) (a) The director may:
- (I) Employ such clerks, deputies, and assistants as the director considers necessary to discharge the duties imposed upon the director or executive director by this part 1 and to designate the duties of such clerks, deputies, and assistants;
 - (II) Investigate, upon the director's own initiative, upon the written and signed complaint of any person, or upon request by the board under section 12-6-104 (3)(f)(I), any suspected or alleged violation by a person licensed under this part 1 or of any rule promulgated under this article 6
- (b) The investigators and their supervisors utilized by the director, while actually engaged in performing their duties, have the authority as delegated by the director to issue subpoenas in relation to performance of their duties enforcing this part 1 and the authority as delegated by the director to issue summonses for violations of sections 12-6-120 (2) and 42-6-142, to issue misdemeanor summonses for violations of section 12-6-119.5 (1)(a), and to procure criminal records during an investigation.
- (4) If any person fails to comply with a cease-and-desist order issued pursuant to this section, the executive director may bring a suit for injunction to prevent any further and continued violation of such order. In any such suit, the final proceedings of the executive director, based upon evidence in record, are prima facie evidence of the facts found therein.
- (5) Repealed.

12-6-106. Records as evidence

Copies of all records and papers in the office of the board, director, or executive director, duly authenticated under the hand and seal of the board, director, or executive director, shall be received in evidence in all cases equally and with like effect as the original thereof.

12-6-107. Attorney general to advise and represent

- (1) The attorney general of this state shall represent the board, director, and executive director and shall give opinions on all questions of law relating to the interpretation of this part 1 or arising out of the administration thereof and shall appear for and in behalf of the board, director, and executive director in all actions brought by or against them, whether under this part 1 or otherwise.
- (2) The board may request the attorney general to make civil investigations and enforce rules and regulations of the board in cases of civil violations and to bring and defend civil suits and proceedings for any of the purposes necessary and proper for carrying out the functions of the board.

12-6-108. Classes of licenses

- (1) The following classes of licenses are issued under this part 1:
- (a) Motor vehicle dealer's license shall permit the licensee to engage in the business of selling, exchanging, leasing, or offering new and used motor vehicles, and this form of license shall permit not more than two persons named therein who shall be owners or part owners of the business of the licensee to act as motor vehicle salespersons.
 - (b) Used motor vehicle dealer's license shall permit the licensee to engage in the business of selling, exchanging, leasing, or offering used motor vehicles only. Such license shall also permit a licensee to negotiate for a consumer the sale, exchange, or lease of used and new motor vehicles not owned by the licensee, except those vehicles defined in section 42-1-102 (55), C.R.S., as motorcycles and section 33-14.5-101 (3), C.R.S., as off-highway vehicles; however, prior to completion of such sale, exchange, or lease of a motor vehicle not owned by the licensee, the licensee shall disclose in writing to the consumer whether the licensee will receive any compensation from the consumer and whether the licensee will receive any compensation from the owner of the motor vehicle as a result of such transaction. If the licensee receives compensation from the owner of the motor vehicle as a result of the transaction, the licensee shall include in the written disclosure the name of such owner from whom the licensee will receive compensation. This form of license shall permit not more than two persons named therein who shall be owners or part owners of the business of the licensee to act as motor vehicle salespersons.
 - (c) A motor vehicle salesperson's license permits the licensee to engage in the activities of a motor vehicle salesperson while employed by a licensed motor vehicle dealer or used motor vehicle dealer.
 - (c.1) (Deleted by amendment, L. 92, p. 1849, § 8, effective July 1, 1992.)
 - (d) Manufacturer's or distributor's license shall permit the licensee to engage in the activities of a manufacturer, distributor, factory branch, or distributor branch and to sell fire trucks.
 - (e) Wholesaler's license shall permit the licensee to engage in the activities of a wholesaler.
 - (f) Manufacturer representative's license shall permit the licensee to engage in the activities of a manufacturer representative.
 - (g) Buyer agent's license shall permit the licensee to engage in the activities of a buyer agent.
 - (h) (i) Wholesale motor vehicle auction dealer's license shall permit a licensee to engage in the activities of a wholesale motor vehicle auction dealer if the licensee provides auction services solely in connection with wholesale transactions in which the purchasers are motor vehicle dealers licensed by this

state or any other jurisdiction or in connection with the sale of government vehicles to consumers at a time and place that does not conflict with a wholesale motor vehicle auction conducted by that licensee. A wholesale motor vehicle auction dealer shall abide by all laws and rules of the state of Colorado.

- (II) A wholesale motor vehicle auction dealer shall maintain a check and title insurance policy for the benefit of such dealer's customers or, alternatively, a wholesale motor vehicle auction dealer shall provide written guarantees of title to such dealer's purchasing customers and written guarantees of payment to such dealer's selling dealers with coverage and exclusions that are customary in check and title insurance policies available to wholesale motor vehicle auction dealers.
- (2) Any license issued by the executive director pursuant to law in effect prior to July 1, 1992, shall be valid for the period for which issued.
- (3) The licensing requirements of this part 1 do not apply to banks, savings banks, savings and loan associations, building and loan associations, or credit unions or an affiliate or subsidiary of such entities in offering to sell, or in the sale of, a motor vehicle that was subject to a lease or that has been repossessed or foreclosed upon if the repossession or foreclosure is in connection with a loan made or originated in Colorado.
- (4) The licensing requirements of this part 1 shall not apply to an insurance company selling or offering to sell a motor vehicle through a motor vehicle dealer or used motor vehicle dealer if the vehicle is obtained by the company as a result of an insurance claim.

12-6-108.5. Temporary motor vehicle dealer license

- (1) (a) If a licensed motor vehicle dealer has entered into a written agreement to sell a dealership to a purchaser and the purchaser has been awarded a new dealership franchise, the board may issue a temporary motor vehicle dealer's license to the purchaser or prospective purchaser. The director shall issue the temporary license only after the board has received the applications for both a temporary motor vehicle dealer's license and a motor vehicle dealer's license, the appropriate application fee for the motor vehicle dealer's application, evidence of a passing test score, and evidence that the franchise has been awarded to the applicant by the manufacturer.
- (b) A temporary motor vehicle dealer's license authorizes the licensee to act as a motor vehicle dealer. Temporary licensees are subject to this article 6 and to all applicable rules adopted by the executive director or the board. A temporary motor vehicle dealer's license is effective for up to sixty days or until the board acts on the licensee's application for a motor vehicle dealer's license, whichever is sooner.
- (2) For the purpose of enabling an out-of-state dealer to sell vehicles on a temporary basis during specifically identified events, the director may issue, upon direction by the board, a temporary

motor vehicle dealer's license, which is effective for thirty days. The temporary licensee is subject to the rules adopted by the executive director or the board.

12-6-109. Display, form, custody, and use of licenses

- (1) The board and the executive director shall prescribe the form of the license to be issued by the executive director and shall imprint on each license the seal of their offices. The executive director shall mail the license to the business address where the motor vehicle salesperson is licensed. Each motor vehicle salesperson shall keep a copy of the license at the salesperson's place of employment for inspection by employers, consumers, the director, the executive director, or the board. Each motor vehicle dealer, manufacturer, distributor, wholesaler, manufacturer representative, wholesale motor vehicle auction dealer, or used motor vehicle dealer shall display conspicuously each person's license at the place of business for which the license was issued.
- (2) Each license issued under this part 1 is separate and distinct. It is a violation of this part 1 for a person to exercise any of the privileges granted under a license that the person does not hold, or for a licensee to knowingly allow such an exercise of privileges.

12-6-110. Fees - disposition - expenses - expiration of licenses

- (1) There shall be collected with each application the fee established pursuant to subsection (5) of this section for each of the following licenses:
 - (a)
 - (I) Motor vehicle dealer's or used motor vehicle dealer's license;
 - (II) Motor vehicle dealer's or used motor vehicle dealer's license, for each place of business in addition to the principal place of business;
 - (III) Renewal or reissue of motor vehicle dealer's or used motor vehicle dealer's license after change in location or lapse in principal place of business;
 - (b) Manufacturer's license;
 - (c) Distributor's license;
 - (d) Wholesaler's license;
 - (e) (Deleted by amendment, L. 2003, p. 1302, § 5, effective April 22, 2003.)
 - (f) Manufacturer representative's license;
 - (g) Motor vehicle salesperson's license including, but not limited to, reissuing a license;
 - (h) (Deleted by amendment, L. 92, p. 1851, § 11, effective July 1, 1992.)
 - (i) Buyer agent's license;
 - (j) Wholesale motor vehicle auction dealer's license.

- (2)** All fees shall be paid to the state treasurer, who shall credit the fees to the auto dealer's license fund created in section 12-6-123.
- (2.5)** If an application for a buyer agent's, motor vehicle dealer's, used motor vehicle dealer's, wholesaler's, or motor vehicle salesperson's license is withdrawn by the applicant prior to issuance of the license, the director shall refund one-half of the license fee.
- (3)**
- (a)** Such licenses, if the same have not been suspended or revoked as provided in this part 1, shall be valid until one year following the month of issuance thereof and shall then expire; except that any license issued under this part 1 shall expire upon the voluntary surrender thereof or upon the abandonment of the licensee's place of business for a period of more than thirty days.
 - (b)** Thirty days before the expiration of a license, the director shall mail to the licensee's business address of record a notice stating when the person's license is due to expire and the fee necessary to renew the license. For a salesperson or manufacturer representative, the notice shall be mailed to the address of the dealer or manufacturer where the person is licensed.
 - (c)** Upon the expiration of such license, unless suspended or revoked, the same may be renewed upon the payment of the fees specified in this section, which shall accompany applications, and such renewal shall be made from year to year as a matter of right; except that, if a motor vehicle dealer, used motor vehicle dealer, or wholesaler voluntarily surrenders its license or abandons its place of business for a period of more than thirty days, the licensee is required to file a new application to renew its license.
 - (d)** Repealed.
 - (e)** Notwithstanding paragraph (a) of this subsection (3), a person has a thirty-day grace period after his or her license expires, and the person may renew the license within such thirty days pursuant to paragraph (c) of this subsection (3), so long as the person has a bond in full force and effect that complies with the applicable bonding requirements of section 12-6-111, 12-6-112, or 12-6-112.2 during such thirty-day period. A person applying during the thirty-day grace period shall pay a late fee established pursuant to subsection (5) of this section.
- (4)** (Deleted by amendment, L. 92, p. 1851, § 11, effective July 1, 1992.)
- (5)**
- (a)** The board shall propose, as part of its annual budget request, an adjustment in the amount of each fee which the board is authorized by law to collect. The budget request and the adjusted fees for the board shall reflect direct and indirect costs.
 - (b)** Based upon the appropriation made and subject to the approval of the executive director, the board shall adjust the fees collected by the executive director so that the revenue generated from said fees covers the direct and indirect costs of administering

this article. Such fees shall remain in effect for the fiscal year for which the appropriation is made.

- (c) Whenever moneys appropriated to the board for its activities for the prior fiscal year are unexpended, said moneys shall be made a part of the appropriation to the board for the next fiscal year, and such amount shall not be raised from fees collected by the board or the executive director. If a supplemental appropriation is made to the board for its activities, the fees of the board and the executive director, when adjusted for the fiscal year next following that in which the supplemental appropriation was made, shall be adjusted by an additional amount which is sufficient to compensate for such supplemental appropriation. Moneys appropriated to the board in the annual general appropriation bill shall be from the fund provided in section 12-6-123.

12-6-111. Bond of licensee

- (1) Before any motor vehicle dealer's, wholesaler's, wholesale motor vehicle auction dealer's, or used motor vehicle dealer's license shall be issued by the board through the executive director to any applicant therefor, the said applicant shall procure and file with the board evidence of a savings account, deposit, or certificate of deposit meeting the requirements of section 11-35-101, C.R.S., or a good and sufficient bond with corporate surety thereon duly licensed to do business within the state, approved as to form by the attorney general of the state, and conditioned that said applicant shall not practice fraud, make any fraudulent representation, or violate any of the provisions of this part 1 that are designated by the board by rule in the conduct of the business for which such applicant is licensed. A motor vehicle dealer or used motor vehicle dealer shall not be required to furnish an additional bond, savings account, deposit, or certificate of deposit under this section if such dealer furnishes a bond, savings account, deposit, or certificate of deposit under section 12-6-512.
- (2) (a) The purpose of the bond procured by the applicant pursuant to subsection (1) of this section and section 12-6-112.2 (1) is to provide for the reimbursement for any loss or damage suffered by any retail consumer caused by violation of this part 1 by a motor vehicle dealer, used motor vehicle dealer, wholesale motor vehicle auction dealer, or wholesaler. For a wholesale transaction, the bond is available to each party to the transaction; except that, if a retail consumer is involved, such consumer shall have priority to recover from the bond. The amount of the bond shall be fifty thousand dollars for a motor vehicle dealer applicant, used motor vehicle dealer applicant, wholesale motor vehicle auction dealer applicant, or wholesaler applicant except the amount of the bond shall be five thousand dollars for those dealers who sell only small utility trailers that weigh less than two thousand pounds. The aggregate liability of the surety for all transactions shall not exceed the amount of the bond, regardless of the number of claims or claimants.

- (b) No corporate surety shall be required to make any payment to any person claiming under such bond until a final determination of fraud or fraudulent representation has been made by the board or by a court of competent jurisdiction.
- (3) All bonds required pursuant to this section shall be renewed annually at such time as the bondholder's license is renewed. Such renewal may be done through a continuation certificate issued by the surety.
- (4) Nothing in this part 1 shall interfere with the authority of the courts to administer and conduct an interpleader action for claims against a licensee's bond.

12-6-112. Motor vehicle salesperson's bond

- (1) Before any motor vehicle salesperson's license is issued by the board through the executive director to any applicant therefor, the applicant shall procure and file with the board evidence of a savings account, deposit, or certificate of deposit meeting the requirements of section 11-35-101, C.R.S., or a good and sufficient bond in the amount of fifteen thousand dollars with corporate surety thereon duly licensed to do business within the state, approved as to form by the attorney general of the state, and conditioned that said applicant shall perform in good faith as a motor vehicle salesperson without fraud or fraudulent representation and without the violation of any of the provisions of this part 1 that are designated by the board by rule. A motor vehicle salesperson shall not be required to furnish an additional bond, savings account, deposit, or certificate of deposit under this section if such dealer furnishes a bond, savings account, deposit, or certificate of deposit under section 12-6-513.
- (2) No corporate surety shall be required to make any payment to any person claiming under such bond until a final determination of fraud or fraudulent representation has been made by the board or by a court of competent jurisdiction.
- (3) All bonds required pursuant to this section shall be renewed annually at such time as the bondholder's license is renewed. Such renewal may be done through a continuation certificate issued by the surety.

12-6-112.2. Buyer agent bonds

- (1) A buyer agent's license shall not be issued by the executive director to any applicant therefor until said applicant procures and files with the executive director evidence of a savings account, deposit, or certificate of deposit meeting the requirements of section 11-35-101, C.R.S., or a good and sufficient bond in the amount of five thousand dollars with a corporate surety duly licensed to do business within the state and approved as to form by the attorney general. The bond shall be available to ensure that said applicant shall perform in good faith as a buyer agent without fraud or fraudulent representation and without violating any of the provisions of this part 1 that are designated by the executive director by rule.

- (2) All bonds required pursuant to this section shall be renewed annually at such time as the bondholder's license is renewed. Such renewal may be done through a continuation certificate issued by the surety.
- (3) No corporate surety shall be required to make any payment to any person claiming under such bond until a final determination of fraud or fraudulent representation has been made by the executive director or by a court of competent jurisdiction.

12-6-112.7. Notice of claims honored against bond

- (1) A corporate surety that has provided a bond to a licensee pursuant to section 12-6-111, 12-6-112, or 12-6-112.2 shall provide notice to the board and executive director of any claim that is honored against the bond within thirty days after the claim is honored.
- (2) A notice provided by a corporate surety pursuant to subsection (1) of this section must be in the form required by the director, subject to approval by the board, and must include the name of the licensee, the name and address of the claimant, the amount of the honored claim, and the nature of the claim against the licensee.

12-6-113. Testing licensees

Persons applying for a motor vehicle dealer's, used motor vehicle dealer's, wholesaler's, wholesale motor vehicle auction dealer's, or motor vehicle salesperson's license under this part 1 shall be examined for their knowledge of the motor vehicle laws of the state of Colorado and the rules promulgated pursuant to this part 1. If the applicant is a corporation, the managing officer shall take such examination, and, if the applicant is a partnership, all the general partners shall take such examination. No license shall be issued except upon successful passing of the examination. The board shall implement by January 1, 2008, a psychometrically valid and reliable salesperson examination that measures the minimum level of competence necessary to practice. This section shall not apply to a powersports vehicle dealer, used powersports vehicle dealer, or powersports salesperson licensed pursuant to part 5 of this article.

12-6-114. Filing of written warranties

Each licensed manufacturer shall file with the director all written warranties and changes in written warranties that the manufacturer makes on any motor vehicle or parts thereof. Each licensed manufacturer shall file with the director a copy of the delivery and preparation obligations of its dealers, and these warranties and obligations constitute the dealer's only responsibility for product liability as between the dealer and the manufacturer. Any mechanical, body, or parts defects arising from any express or implied warranties of the manufacturer constitute the manufacturer's product or warranty liability, and the manufacturer shall reasonably compensate any authorized dealer who performs work to rectify the manufacturer's product or warranty defects.

12-6-115. Application - prelicensing education - fingerprint-based background check - rules

- (1) Application for a motor vehicle dealer's, motor vehicle salesperson's, used motor vehicle dealer's, wholesale motor vehicle auction dealer's, or wholesaler's license shall be made to the board.
- (2) Application for distributor's, manufacturer representative's, or manufacturer's licenses shall be made to the executive director.
- (3) All fees for licenses shall be paid at the time of the filing of application for license.
- (4) To be licensed as a motor vehicle dealer, a person must file with the board a certified copy of a certificate of appointment as a dealer from a manufacturer.
- (5)
 - (a) Each person applying for a manufacturer's or distributor's license must:
 - (I) File with the director a certified copy of a typical sales, service, and parts agreement with all motor vehicle dealers; and
 - (II) File evidence of the appointment of an agent for process in the state of Colorado.
 - (b) Within sixty days after amending or modifying or adding an addendum to the sales, service, or parts agreement of more than one motor vehicle dealer, a licensed manufacturer or distributor shall file a certified copy of the new sales, service, and parts agreement, including the changes, with the director if the amendment, modification, or addendum materially alters the rights and obligations of the contracting parties.
- (6) All persons applying for a motor vehicle dealer's license, a used motor vehicle dealer's license, a wholesaler's license, a motor vehicle auctioneer's license, or a motor vehicle salesman's license shall file with the board a good and sufficient instrument in writing in which he shall appoint the secretary of the board as the true and lawful agent of said applicant upon whom all process may be served in any action which may thereafter be commenced against said applicant arising out of any claim for damages suffered by any firm, person, association, or corporation by reason of the violation of said applicant of any of the terms and provisions of this part 1 or any condition of the applicant's bond.
- (7)
 - (a) A person applying for a used motor vehicle dealer's license, a wholesale motor vehicle auction dealer's license, or a wholesaler's license shall file with the board a certification that the applicant has met the educational requirements for licensure under this subsection (7). This subsection (7) shall not apply to a person who has held a license within the last three years as a motor vehicle dealer, used motor vehicle dealer, wholesaler, wholesale motor vehicle auction dealer, powersports vehicle dealer, or used powersports vehicle dealer under this part 1 or part 5 of this article.

- (b)** An applicant for a used motor vehicle dealer's license, a wholesale motor vehicle auction dealer's license, or a wholesaler's license shall not be licensed unless one of the following persons has completed an eight-hour prelicensing education program:

 - (I)** The managing officer if the applicant is a corporation or limited liability company;
 - (II)** All of the general partners if the applicant is any form of partnership; or
 - (III)** The owner or managing officer if the applicant is a sole proprietorship.
- (c)** The prelicensing education program shall include, without limitation, state and federal statutes and rules governing the sale of motor vehicles.
- (d)** A prelicensing education program shall not fulfill the requirements of this section unless approved by the board. The board shall approve any program with a curriculum that reasonably covers the material required by this section within eight hours.
- (e)** The board may adopt rules establishing reasonable fees to be charged for the prelicensing education program.
- (f)** The board may adopt reasonable rules to implement this section, including, without limitation, rules that govern:

 - (I)** The content and subject matter of education;
 - (II)** The criteria, standards, and procedures for the approval of courses and course instructors;
 - (III)** The training facility requirements; and
 - (IV)** The methods of instruction.
- (g)** An approved prelicensing program provider shall issue a certificate to a person who successfully completes the approved prelicensing education program. The current certificate of completion, or a copy of the certificate, shall be posted conspicuously at the dealership's principal place of business.
- (h)** An approved prelicensing program provider shall submit a certificate to the director for each person who successfully completes the prelicensing education program. The certificate may be transmitted electronically.
- (8) (a)** With the submission of an application for any license issued under this part 1, each applicant shall submit a complete set of fingerprints to the Colorado bureau of investigation or the auto industry division for the purpose of conducting fingerprint-based criminal history record checks. The Colorado bureau of investigation shall forward the fingerprints to the federal bureau of investigation for the purpose of conducting fingerprint-based criminal history record checks. The board or the executive director shall use the information resulting from the fingerprint-based criminal history record

check to investigate and determine whether an applicant is qualified to be licensed. The board or the executive director may verify the information an applicant is required to submit. The applicant shall pay the costs associated with the fingerprint-based criminal history record check to the Colorado bureau of investigation.

- (b) This subsection (8) does not apply to a publicly traded company or the company's subsidiary.

12-6-116. Notice of change of address or status

- (1) The board, through the executive director, shall not issue a motor vehicle dealer's license or used motor vehicle dealer's license to any applicant therefor who has no principal place of business as is defined in this part 1. Should the motor vehicle dealer or used motor vehicle dealer change the site or location of such dealer's principal place of business, such dealer shall immediately upon making such change so notify the board in writing, and thereupon a new license shall be granted for the unexpired portion of the term of such license at a fee established pursuant to section 12-6-110. Should a motor vehicle dealer or used motor vehicle dealer, for any reason whatsoever, cease to possess a principal place of business, as defined in this part 1, from and on which such dealer conducts the business for which such dealer is licensed, such dealer shall immediately so notify in writing the board and, upon demand therefor by the board, shall deliver to it such dealer's license, which shall be held and retained until it appears to the board that such licensee again possesses a principal place of business; whereupon, such dealer's license shall be reissued. Nothing in this part 1 shall be construed to prevent a motor vehicle dealer or used motor vehicle dealer from conducting the business for which such dealer is licensed at one or more sites or locations not contiguous to such dealer's principal place of business but operated and maintained in conjunction therewith.
- (2)
 - (a) If a motor vehicle dealer changes to a new line-make of motor vehicles, adds another franchise for the sale of new motor vehicles, or cancels or, for any cause whatever, otherwise loses a franchise for the sale of new motor vehicles, the dealer shall immediately so notify the board. In the case of a cancellation or loss of franchise, the board shall determine whether the dealer who lost the franchise should be licensed as a used motor vehicle dealer.
 - (b) If the motor vehicle dealer no longer possesses a franchise to sell new motor vehicles, the board shall take up, and the motor vehicle dealer shall deliver to the board, the dealer's license, and the board shall direct the director to issue the dealer a used motor vehicle dealer's license.
 - (c) Upon the cancellation or loss of a franchise to sell new motor vehicles and the relicensing of a dealer as a used motor vehicle dealer, the dealer may continue in the business of a motor vehicle dealer for a time, not exceeding six months after the date of the relicensing of the dealer, to enable the dealer to dispose of the stock of new motor vehicles on hand at the time of relicensing, but not otherwise.

- (3) If a motor vehicle salesperson is discharged, leaves an employer, or changes a place of employment, the motor vehicle dealer or used motor vehicle dealer who last employed the salesperson shall confiscate and return such salesperson's license to the board. Upon being reemployed as a motor vehicle salesperson, the motor vehicle salesperson shall notify the board. Upon receiving such notification, the board shall issue a new license for the unexpired portion of such returned license after collecting a fee set pursuant to section 12-6-110 (5). It shall be unlawful for such salesperson to act as a motor vehicle salesperson until a new license is procured.
- (4) Should a wholesaler, for any reason whatsoever, change such wholesaler's place of business or business address during any license year, such wholesaler shall immediately so notify the board.
- (5) Any wholesale motor vehicle auction dealer who changes a place of business or business address during any license year shall notify the board immediately of such dealer's new business address.
- (6) (a) Except as specified in subsection (6)(d) of this section:
- (I) A person holding an ownership interest in a licensed corporation, limited liability company, limited liability partnership, or other business entity shall not sell the interest to a person who does not already own an interest in the business entity until the owner applies to the board to be approved to hold an ownership interest in the business entity and the board approves the person to hold the interest.
 - (II) A licensed corporation, limited liability company, limited liability partnership, or other business entity shall notify the board within ten days after a transfer, other than a sale, of any ownership that results in a new person holding an interest in the business entity. To continue to hold ownership in the business, the transferee shall apply to the board for approval to continue holding an ownership interest in the business entity.
- (b) To be approved by the board to hold an ownership interest in a licensed business entity, the new owner must demonstrate the qualifications necessary for licensing, including a fingerprint-based criminal history record check, in accordance with this part 1.
- (c) (I) If the board does not approve a person to hold an ownership interest in a licensed business entity, the person shall transfer the interest within six months after acquiring the ownership interest.
- (II) This subsection (6)(c) does not authorize a person to hold an interest in a licensed business entity when the person acquired the interest as the result of a sale that violates subsection (6)(a)(I) of this section.

- (d) (I) This subsection (6) does not apply to the sale or transfer of an interest in a publicly traded company.
- (II) This subsection (6) does not apply to the sale of an interest to an institutional investor of a business entity that is subject to the reporting requirements of the "Securities Exchange Act of 1934", 15 U.S.C. sec. 78a et seq., as amended. For the purposes of this subsection (6)(d)(II), "institutional investor" means an entity, such as a pension fund, endowment fund, insurance company, commercial bank, or mutual fund, that invests money on behalf of its members or clients and that is required by the United States securities and exchange commission to file a form 13F, or its successor form, to report quarterly holdings.

12-6-117. Principal place of business – requirements

- (1) The building or structure required to be located on a principal place of business shall have electrical service and adequate sanitary facilities.
 - (2) (a) In no event shall a room in a hotel, rooming house, or apartment house building or a part of any single or multiple unit dwelling house be considered a "principal place of business" within the terms and provisions of this part 1, unless the entire ground floor of such hotel, apartment house, or rooming house building or such dwelling house is devoted principally to and occupied for commercial purposes and the office of the dealer is located on the ground floor thereof.
 - (b) A motor vehicle dealer who operates such motor vehicle dealer's business from his or her primary residence and who has been a resident of Colorado for the immediately preceding twelve-month period and is a motor vehicle dealer only because such dealer sells custom trailers for one or more manufacturers and maintains an inventory of fewer than four vehicles at all times shall be exempt from paragraph (a) of this subsection (2). Any motor vehicle dealer who is issued dealer plates in accordance with this paragraph (b) pursuant to section 42-3-116, C.R.S., shall only use such plates on trailers.
- (3) Repealed.
 - (4) Nothing in this section shall be construed to exempt a motor vehicle dealer from local zoning ordinances

12-6-118 Licenses- grounds for denial, suspension, or revocation

- (1) A manufacturer's or distributor's license may be denied, suspended, or revoked on the following grounds:
 - (a) (Deleted by amendment, L. 92, p. 1857, § 20, effective July 1, 1992.)
 - (b) Material misstatement in an application for a license;

- (c) Willful failure to comply with this part 1 or any rule promulgated by the executive director;
 - (d) Engaging, in the past or present, in any illegal business practice.
- (2) A manufacturer representative's license may be denied, suspended, or revoked on the following grounds:
- (a) (Deleted by amendment, L. 92, p. 1857, § 20, effective July 1, 1992.)
 - (b) Material misstatement in an application for a license;
 - (c) Willful failure to comply with any provision of this part 1 or any rule or regulation promulgated by the executive director under this part 1;
 - (d) Having indulged in any unconscionable business practice pursuant to title 4, C.R.S.;
 - (e) Having coerced or attempted to coerce any motor vehicle dealer to accept delivery of any motor vehicle, parts or accessories therefor, or any other commodities or services which have not been ordered by said dealer;
 - (f) Having coerced or attempted to coerce any motor vehicle dealer to enter into any agreement to do any act unfair to said dealer by threatening to cause the cancellation of the franchise of said dealer;
 - (g) Having withheld, threatened to withhold, reduced, or delayed without just cause an order for motor vehicles, parts or accessories therefor, or any other commodities or services which have been ordered by a motor vehicle dealer;
 - (h) Engaging, in the past or present, in any illegal business practice.
- (3) A motor vehicle dealer's, wholesale motor vehicle auction dealer's, wholesaler's, buyer agent's, or used motor vehicle dealer's license may be denied, suspended, or revoked on the following grounds:
- (a) (Deleted by amendment, L. 92, p. 1857, § 20, effective July 1, 1992.)
 - (b) Material misstatement in an application for a license;
 - (c) Violation of any of the terms and provisions of this part 1 or any rule or regulation promulgated by the board under this part 1;
 - (d) Having been convicted of or pled nolo contendere to any felony, or any crime pursuant to article 3, 4, or 5 of title 18, C.R.S., or any like crime pursuant to federal law or the law of any other state. A certified copy of the judgment of conviction by a court of competent jurisdiction shall be conclusive evidence of such conviction in any hearing held pursuant to this article.
 - (e) Defrauding any buyer, seller, motor vehicle salesperson, or financial institution to such person's damage;

- (f) Intentional or negligent failure to perform any written agreement with any buyer or seller;
- (g) Failure or refusal to furnish and keep in force any bond required under this part 1
- (h) Having made a fraudulent or illegal sale, transaction, or repossession;
- (i) Willful misrepresentation, circumvention, or concealment of or failure to disclose, through whatsoever subterfuge or device, any of the material particulars or the nature thereof required to be stated or furnished to the buyer;
- (j) Repealed.
- (k) To intentionally publish or circulate any advertising which is misleading or inaccurate in any material particular or which misrepresents any of the products sold or furnished by a licensed dealer;
- (l) To knowingly purchase, sell, or otherwise acquire or dispose of a stolen motor vehicle;
- (m) For any licensed motor vehicle dealer or used motor vehicle dealer to engage in the business for which such dealer is licensed without at all times maintaining a principal place of business as required by this part 1 during reasonable business hours;
- (n) Engaging in such business through employment of an unlicensed motor vehicle salesperson;
- (o) To willfully violate any state or federal law respecting commerce or motor vehicles, or any lawful rule or regulation respecting commerce or motor vehicles promulgated by any licensing or regulating authority pertaining to motor vehicles, under circumstances in which the act constituting the violation directly and necessarily involves commerce or motor vehicles;
- (p) (Deleted by amendment, L. 92, p. 1857, § 20, effective July 1, 1992.)
- (q) Repealed.
- (r) Representing or selling as a new and unused motor vehicle any motor vehicle which the dealer or salesperson knows has been used and operated for demonstration purposes or which the dealer or salesperson knows is otherwise a used motor vehicle;
- (s) Violating any state or federal statute or regulation issued thereunder dealing with odometers;
- (t)
 - (I) Selling to a retail customer a motor vehicle which is not equipped or in proper condition and adjustment as required by part 2 of article 4 of title 42, C.R.S., unless such vehicle is sold as a tow away, not to be driven;
 - (II) Repealed.

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- (t.1) Repealed.
- (u) Committing a fraudulent insurance act pursuant to section 10-1-128, C.R.S.;
- (v) Failure to give notice to a prospective buyer of the acceptance or rejection of a motor vehicle purchase order agreement within a reasonable time period, as determined by the board, when the licensee is working with the prospective buyer on a finance sale or a consignment sale.
- (4) A wholesaler's or wholesale motor vehicle auction dealer's license may be denied, suspended, or revoked for the selling, leasing, or offering or attempting to negotiate the sale, lease, or exchange of an interest in motor vehicles by such wholesaler or wholesale motor vehicle auction dealer to persons other than motor vehicle dealers, used motor vehicle dealers, or other wholesalers or wholesale motor vehicle auction dealers.
- (4.5) The license of a motor vehicle dealer may be denied, revoked, suspended, or otherwise subject to discipline imposed under this part 1 if an owner is acting as a salesperson without a motor vehicle salesperson license and the owner commits any of the acts or omissions that subject a salesperson's license to denial, revocation, or suspension under subsection (5) of this section.
- (5) The license of a motor vehicle salesperson may be denied, revoked, or suspended on the following grounds:

 - (a) (Deleted by amendment, L. 92, p. 1857, § 20, effective July 1, 1992.)
 - (b) Material misstatement in an application for a license;
 - (c) Failure to comply with any provision of this part 1 or any rule or regulation promulgated by the board or executive director under this part 1;
 - (d) To engage in the business for which such licensee is licensed without having in force and effect a good and sufficient bond with corporate surety as provided in this part 1;
 - (e) To intentionally publish or circulate any advertising which is misleading or inaccurate in any material particular or which misrepresents any motor vehicle products sold or attempted to be sold by such salesperson;
 - (f) Having indulged in any fraudulent business practice;
 - (g) Selling, offering, or attempting to negotiate the sale, exchange, or lease of motor vehicles for any motor vehicle dealer or used motor vehicle dealer for which such salesperson is not licensed; except that negotiation with a motor vehicle dealer for the sale, exchange, or lease of new and used motor vehicles, except those vehicles defined in section 42-1-102 (55), C.R.S., as motorcycles and section 33-14.5-101 (3), C.R.S., as off-highway vehicles, by a salesperson compensated for said negotiation by the used motor vehicle dealer for which such salesperson is licensed shall not be grounds for denial, revocation, or suspension;

- (h) Representing oneself as a salesperson for any motor vehicle dealer or used motor vehicle dealer when such salesperson is not so employed and licensed;
- (i) (Deleted by amendment, L. 92, p. 1857, § 20, effective July 1, 1992.)
- (j) Having been convicted of or pled nolo contendere to any felony, or any crime pursuant to article 3, 4, or 5 of title 18, C.R.S., or any like crime pursuant to federal law or the law of any other state. A certified copy of the judgment of conviction by a court of competent jurisdiction shall be conclusive evidence of such conviction in any hearing held pursuant to this article.
- (k) Having knowingly purchased, sold, or otherwise acquired or disposed of a stolen motor vehicle;
- (l) Employing an unlicensed motor vehicle salesperson;
- (m) Violating any state or federal statute or regulation issued thereunder dealing with odometers;
- (n) Defrauding any retail buyer to such person's damage;
- (o) Representing or selling as a new and unused motor vehicle any motor vehicle which the salesperson knows has been used and operated for demonstration purposes or which the salesperson knows is otherwise a used motor vehicle;
- (p)
 - (I) Selling to a retail customer a motor vehicle which is not equipped or in proper condition and adjustment as required by part 2 of article 4 of title 42, C.R.S., unless such vehicle is sold as a tow away, not to be driven;
 - (II) Repealed.
- (p.1) Repealed.
- (q) Willfully violating any state or federal law respecting commerce or motor vehicles, or any lawful rule or regulation respecting commerce or motor vehicles promulgated by any licensing or regulating authority pertaining to motor vehicles, under circumstances in which the act constituting the violation directly and necessarily involves commerce or motor vehicles;
- (r) Improperly withholding, misappropriating, or converting to such salesperson's own use any money belonging to customers or other persons, received in the course of employment as a motor vehicle salesperson.
- (6) Any license issued pursuant to this part 1 may be denied, revoked, or suspended if unfitness of such licensee or licensee applicant is shown in the following:
 - (a) The licensing character or record of the licensee or licensee applicant;
 - (b) The criminal character or record of the licensee or licensee applicant;
 - (c) The financial character or record of the licensee or licensee applicant;

- (d) Violation of any lawful order of the board.
- (7) (a) Any license issued or for which an application has been made pursuant to this part 1 shall be revoked or denied if the licensee or applicant has been convicted of or pleaded no contest to any of the following offenses in this state or any other jurisdiction during the previous ten years:
- (i) A felony in violation of article 3, 4, or 5 of title 18, C.R.S., or any similar crime under federal law or the law of any other state; or
 - (ii) A crime involving odometer fraud, salvage fraud, motor vehicle title fraud, or the defrauding of a retail consumer in a motor vehicle sale or lease transaction.
- (8) In any disciplinary hearing, action, or order of the board involving a violation of section 42-6-112 or 42-6-119 (3), C.R.S., it is an affirmative defense that the dealer has taken every reasonable action necessary to deliver or facilitate the delivery of the certificate of title within thirty days. To qualify as having taken every reasonable action to deliver or facilitate the delivery of the certificate of title, the dealer must have, at a minimum:
- (a) Processed and mailed any required loan payoffs in a reasonable amount of time;
 - (b) Contacted the prior lender and taken any actions necessary to obtain a certificate of title or duplicate certificate of title, either of which must be free of liens;
 - (c) Taken any action necessary to obtain information or signatures from the prior owner necessary to have a new certificate of title issued for the motor vehicle;
 - (d) Submitted all paperwork that the dealer has obtained to the authorized agent and that is necessary to have a new certificate of title issued for the motor vehicle; and
 - (e) Corrected any errors in any filings with the department in a reasonable amount of time.
- (9) A person whose license issued under this part 1 is revoked or who surrenders a license to avoid discipline is ineligible to apply for a new license under this part 1 for one year after the date of revocation or surrender of the license.

12-6-119. Procedure for denial, suspension, or revocation of license judicial review

- (1) The denial, suspension, or revocation of licenses issued under this part 1 shall be in accordance with the provisions of sections 24-4-104 and 24-4-105, C.R.S.; except that the discovery available under rule 26 (b)(2) of the Colorado rules of civil procedure is available in any proceeding.
- (2) (a) (i) The board shall appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to conduct any hearing concerning the licensing or discipline of a motor vehicle dealer, used motor vehicle dealer, wholesaler, buyer's agent, or wholesale motor vehicle auction dealer; except that the board may, upon a unanimous vote of the members present when the vote is taken, conduct the hearing in lieu of appointing an administrative law judge.

- (II) Beginning July 1, 2008, the board shall issue an annual report to the executive director detailing the number of hearings held pursuant to this paragraph (a) and the number of such hearings conducted by the board. If the board conducts greater than forty percent of the hearings, the executive director shall analyze the hearing procedures and acts and issue a report to the general assembly, which shall include any recommendations of the executive director.
- (b) The board shall assign a hearing concerning the licensing or discipline of a motor vehicle salesperson to the executive director who shall appoint an officer to conduct a hearing.
- (3) Hearings conducted before an administrative law judge shall be in accordance with the rules of procedure of the office of administrative courts. Hearings conducted before an officer appointed by the executive director shall be in accordance with the rules of procedure established by the executive director.
- (4) The board may summarily suspend a licensee required to post a bond under this article if such licensee does not have a bond in full force and effect as required by this article. The suspension shall become effective upon the earlier of the licensee receiving notice of the suspension or within three days after the notice of suspension is mailed to a licensee's last-known address on file with the board. The notice may be affected by certified mail or personal delivery.
- (5) The court of appeals shall have initial jurisdiction to review all final actions and orders that are subject to judicial review of the board. Such proceedings shall be conducted in accordance with section 24-4-106 (11), C.R.S.

12-6-119.5. Sales activity following license denial, suspension, or revocation - unlawful act - penalty

- (1) (a) It shall be unlawful and a violation of this part 1 for any person whose motor vehicle dealer's, used motor vehicle dealer's, motor vehicle wholesaler's, or motor vehicle salesperson's license has been denied, suspended, or revoked to exercise any of the privileges of the license that was denied, suspended, or revoked.
- (b) A violation of paragraph (a) of this subsection (1) shall be punishable in accordance with section 12-6-121; except that a second or subsequent violation of said paragraph (a) shall be a class 6 felony.
- (c) In any trial for a violation of paragraph (a) of this subsection (1):

 - (I) A duly authenticated copy of the board's order of denial, suspension, or revocation shall constitute prima facie evidence of such denial, suspension, or revocation;
 - (II) A duly authenticated invoice, buyer's order, or other customary, written sales or purchase document or instrument proven to be signed by the defendant and indicating the defendant's role in the purchase or sale of a motor vehicle at any

motor vehicle auction, wholesale motor vehicle sales location, or retail motor vehicle sales location, as applicable, shall constitute prima facie evidence of the defendant's exercise of a privilege of licensure;

- (III) It shall be an affirmative defense that the defendant bought or sold a motor vehicle that was, at all relevant times, intended for the defendant's own use and not bought or sold for the purpose of profit or gain; and
- (IV) The fact that the defendant has a motor vehicle dealer's, used motor vehicle dealer's, motor vehicle wholesaler's, or motor vehicle salesperson's license, or any other license to buy and sell motor vehicles, that is issued by a state or jurisdiction other than Colorado shall not constitute a defense.

(2) Upon the defendant's conviction by entry of a plea of guilty or nolo contendere or judgment or verdict of guilt in connection with a violation of paragraph (a) of subsection (1) of this section or of section 12-6-120 (2) or 42-6-142 (1), C.R.S., the court shall immediately give the executive director written notice of such conviction. In addition, the court shall forward to the executive director copies of documentation of any conviction on a lesser included offense and any amended charge, plea bargain, deferred prosecution, deferred sentence, or deferred judgment in connection with the original charge.

(3) Upon receiving notice of a conviction or other disposition pursuant to subsection (2) of this section, the executive director or his or her designee shall forward such notice to the motor vehicle dealer board, which shall immediately examine its files to determine whether in fact the defendant's license was denied, suspended, or revoked at the time of the offense to which the conviction or other disposition relates. If in fact the defendant's license was denied, suspended, or revoked at the time of such offense, the board:

- (a) Shall not issue or reinstate any license to the defendant until one year after the time the defendant would otherwise have been eligible to receive a new or reinstated license; and
- (b) Shall revoke or suspend any other licenses held by the defendant until at least one year after the date of the conviction or other disposition.

12-6-120. Unlawful acts

(1) It is unlawful and a violation of this part 1 for any manufacturer, distributor, or manufacturer representative:

- (a) To willfully fail to perform or cause to be performed any written warranties made with respect to any motor vehicle or parts thereof;
- (b) To coerce or attempt to coerce any motor vehicle dealer to perform or allow to be performed any act that could be financially detrimental to the dealer or that would impair the dealer's goodwill or to enter into any agreement with a manufacturer or

distributor that would be financially detrimental to the dealer or impair the dealer's goodwill, by threatening to cancel or not renew any franchise between a manufacturer or distributor and said dealer;

- (c)** To coerce or attempt to coerce any motor vehicle dealer to accept delivery of any motor vehicle, parts or accessories therefor, or any commodities or services which have not been ordered by said dealer;
- (d)**
 - (I)** To cancel or cause to be canceled, directly or indirectly, without just cause, the franchise of any motor vehicle dealer, and the nonrenewal of a franchise or selling agreement without just cause is a violation of this paragraph (d) and shall constitute an unfair cancellation.
 - (II)** As used in this paragraph (d), "just cause" shall be determined in the context of all circumstances surrounding the cancellation or nonrenewal, including but not limited to:
 - (A)** The amount of business transacted by the motor vehicle dealer;
 - (B)** The investments necessarily made and obligations incurred by the motor vehicle dealer, including but not limited to goodwill, in the performance of its duties under the franchise agreement, together with the duration and permanency of such investments and obligations;
 - (C)** The potential for harm to consumers as a result of disruption of the business of the motor vehicle dealer;
 - (D)** The motor vehicle dealer's failure to provide adequate service of facilities, equipment, parts, and qualified service personnel;
 - (E)** The motor vehicle dealer's failure to perform warranty work on behalf of the manufacturer, subject to reimbursement by the manufacturer; and
 - (F)** The motor vehicle dealer's failure to substantially comply, in good faith, with requirements of the franchise that are determined to be reasonable and material.
 - (III)** The following conduct by a motor vehicle dealer shall constitute just cause for termination without consideration of other factors:
 - (A)** Conviction of, or a plea of guilty or nolo contendere to, a felony;
 - (B)** A continuing pattern of fraudulent conduct against the manufacturer or consumers; or
 - (C)** Continuing failure to operate for ten days or longer.

- (e)** To withhold, reduce, or delay unreasonably or without just cause delivery of motor vehicles, motor vehicle parts and accessories, commodities, or moneys due motor vehicle dealers for warranty work done by any motor vehicle dealer;
- (f)** To withhold, reduce, or delay unreasonably or without just cause services contracted for by motor vehicle dealers;
- (g)** To coerce any motor vehicle dealer to provide installment financing with a specified financial institution;
- (h)** To violate any duty imposed by, or fail to comply with, any provision of section 12-6-120.3, 12-6-120.5, or 12-6-120.7;
- (i)**
 - (I)** To fail to provide to the motor vehicle dealer, within twenty days after receipt of a notice of intent from a motor vehicle dealer, the list of documents and information necessary to approve the sale or transfer of the ownership of a dealership by sale of the business or by stock transfer or the change in executive management of the dealership;
 - (II)** To fail to confirm within twenty days after receipt of all documents and information listed in subparagraph (I) of this paragraph (i) that such documentation and information has been received;
 - (III)** To refuse to approve, unreasonably, the sale or transfer of the ownership of a dealership by sale of the business or by stock transfer within sixty days after the manufacturer has received all documents and information necessary to approve the sale or transfer of ownership, or to refuse to approve, unreasonably, the change in executive management of the dealership within sixty days after the manufacturer has received all information necessary to approve the change in management; except that nothing in this part 1 shall authorize the sale, transfer, or assignment of a franchise or a change of the principal operator without the approval of the manufacturer or distributor unless the manufacturer or distributor fails to send notice of the disapproval within sixty days after receiving all documents and information necessary to approve the sale or transfer of ownership; or
 - (IV)** To condition the sale, transfer, relocation, or renewal of a franchise agreement, or to condition sales, services, parts, or finance incentives, upon site control or an agreement to renovate or make improvements to a facility; except that voluntary acceptance of such conditions by the dealer shall not constitute a violation;
- (j)**
 - (I)** To fail or refuse to offer to its same line-make franchised dealers all models manufactured for that line-make except as a result of a strike or labor difficulty, lack of manufacturing capacity, shortage of materials, freight embargo, or other cause over which the manufacturer has no control; or

of the manufacturer if acquisition of such sign was required by the manufacturer;

- (D)** The fair market value of all special tools and equipment that were acquired from the manufacturer or from sources approved and required by the manufacturer and that are in good and usable condition, excluding normal wear and tear; and
- (E)** The cost of transporting, handling, packing, and loading the motor vehicles, supplies, parts, accessories, signs, special tools, equipment, and furnishings described in this paragraph (I).
- (II)** This paragraph (I) shall only apply to manufacturers of recreational vehicles in cases where the manufacturer terminates, cancels, or fails to renew the recreational vehicle dealer franchise; and this paragraph (I) shall not apply to manufacturers of vehicles with a passenger capacity of thirty-two or more.
- (m)** To require, coerce, or attempt to coerce any motor vehicle dealer to close or change the location of the motor vehicle dealer, or to make any substantial alterations to the dealer premises or facilities when doing so would be unreasonable or without written assurance of a sufficient supply of motor vehicles so as to justify such changes, in light of the current market and economic conditions;
- (n)**

 - (I)** To authorize or permit a person to perform warranty service repairs on motor vehicles unless the person is:

 - (A)** A motor vehicle dealer with whom the manufacturer has entered into a franchise agreement for the sale and service of the manufacturer's motor vehicles; or
 - (B)** A person or government entity that has purchased new motor vehicles pursuant to a manufacturer's fleet discount program and is performing the warranty service repairs only on vehicles owned by such person or entity.
 - (II)** This paragraph (n) shall not apply to manufacturers of recreational vehicles nor to manufacturers of vehicles with a passenger capacity of thirty-two or more.
- (o)** To require, coerce, or attempt to coerce any motor vehicle dealer to prospectively agree to a release, assignment, novation, waiver, or estoppel that would relieve any person of a duty or liability imposed under this article except in settlement of a bona fide dispute;
- (p)** To discriminate between or refuse to offer to its same line-make franchised dealers all models manufactured for that line-make based upon unreasonable sales and service standards;

- (q)** To fail to make practically available any incentive, rebate, bonus, or other similar benefit to a motor vehicle dealer that is offered to another motor vehicle dealer of the same line-make within this state;
- (r)** To fail to pay to a motor vehicle dealer:

 - (I)** Within ninety days after the termination, cancellation, or nonrenewal of a franchise for the failure of a dealer to meet performance sales and service obligations or after the termination, elimination, or cessation of a line-make, the cost of the lease for the facilities used for the franchise or line-make for the unexpired term of the lease, not to exceed one year; except that:

 - (A)** If the motor vehicle dealer owns the facilities, the value of renting such facilities for one year, prorated for each line-make based upon total sales volume for the previous twelve months before the involuntary termination;
 - (B)** If the dealer sells recreational vehicles and a subsequent manufacturer or distributor that manufactures or distributes recreational vehicles replaces any portion of the vacated facilities, the lease or rental value shall be prorated on a monthly basis unless the dealer sells motor vehicles that are not recreational vehicles;
 - (C)** Nothing in this subparagraph (I) shall be construed to limit the application of paragraph (d) of this subsection (1);
 - (II)** Within ninety days after the termination, elimination, or cessation of a line-make or the termination of a franchise due to the insolvency of the manufacturer or distributor, the fair market value of the motor vehicle dealer's goodwill for the line-make as of the date the manufacturer or distributor announces the action that results in the termination, elimination, or cessation, not including any amounts paid under sub-subparagraphs (A) to (E) of subparagraph (I) of paragraph (I) of this subsection (1);
- (s)** To condition a franchise agreement on improvements to a facility unless reasonably required by the technology of a motor vehicle being sold at the facility;
- (t)** To sell or offer for sale a low-speed electric vehicle, as defined by section 42-1-102, C.R.S., for use on a roadway unless the vehicle complies with part 2 of article 4 of title 42, C.R.S.;
- (u)** To charge back, deny motor vehicle allocation, withhold payments, or take other actions against a motor vehicle dealer if a motor vehicle sold by the motor vehicle dealer is exported from Colorado unless the manufacturer, distributor, or manufacturer representative proves that the motor vehicle dealer knew or reasonably should have

known a motor vehicle was intended to be exported, which shall operate as a rebuttable presumption that the motor vehicle dealer did not have such knowledge;

- (v)** Within ninety days after the termination, elimination, or cessation of a line-make or the termination, cancellation, or nonrenewal of a franchise by the manufacturer, distributor, or manufacturer representative, for any reason other than that the motor vehicle dealer commits fraud, makes a misrepresentation, or commits any other crime within the scope of the franchise agreement or in the operation of the dealership, to fail to reimburse a motor vehicle dealer for the cost depreciated by five percent per year of any upgrades or alterations to the motor vehicle dealer's facilities required by the manufacturer, distributor, or manufacturer representative within the previous five years;
- (w)** To fail to notify a motor vehicle dealer at least ninety days before the following and to provide the specific reasons for the following:

 - (I)** Directly or indirectly terminating, cancelling, or not renewing a franchise agreement; or
 - (II)** Modifying, replacing, or attempting to modify or replace the franchise or selling agreement of a motor vehicle dealer, including a change in the dealer's geographic area upon which sales or service performance is measured, if the modification would substantially and adversely alter the rights or obligations of the dealer under the current franchise or selling agreement or would substantially impair the sales or service obligations or the dealer's investment; and
- (x)** To require, coerce, or attempt to coerce a motor vehicle dealer to substantially alter a facility or premises if:

 - (I)** The facility or premises has been altered within the last ten years at a cost of more than two hundred fifty thousand dollars and the alteration was required and approved by the manufacturer, distributor, or manufacturer representative unless subsection (1)(x)(II) of this section applies to the dealer; except that this subsection (1)(x) does not apply to improvements made to comply with health or safety laws, to improvements made to accommodate the technology requirements necessary to sell or service a line-make, to technological improvements related to electric, automated, compressed natural gas, and fuel-cell motor vehicles, or to improvements made to install or upgrade electric vehicle charging equipment; or
 - (II)** The motor vehicle dealer sells only motorcycles or motorcycles and powersports vehicles, the facility or premises has been altered within the last ten years at a cost of more than twenty-five thousand dollars, and the alteration was required and approved by the manufacturer, distributor, or manufacturer representative;

except that this subsection (1)(x) does not apply to improvements made to comply with health or safety laws, to improvements made to accommodate the technology requirements necessary to sell or service a line-make, to technological improvements related to electric, automated, compressed natural gas, and fuel-cell motor motorcycles and powersports vehicles, or to improvements made to install or upgrade electric vehicle charging equipment.

- (y) (I) To sell or offer to sell new motor vehicles to a franchised motor vehicle dealer with whom the manufacturer has a franchise agreement at a lower actual price than the actual price offered to any other motor vehicle dealer with whom the manufacturer has a franchise agreement for the same motor vehicle similarly equipped; except that this subsection (1)(y) does not apply to:

 - (A) Resale to any government;
 - (B) Donation or use by the dealer in a driver education program; or
 - (C) A price change made in the ordinary course of business if made available to all motor vehicle dealers when the price changes.
- (II) This subsection (1)(y) does not prohibit a manufacturer, distributor, or manufacturer representative from offering incentive programs, sales-promotion plans, or other discounts if the incentives or discounts are reasonably available to all motor vehicle dealers with whom the manufacturer has a franchise agreement.
- (z) To require a motor vehicle dealer to grant a manufacturer, distributor, or manufacturer representative the following or to enforce the following if the exercise of the contractual right would stop the transfer of the motor vehicle dealer ownership from an owner to an immediate family member of the owner:

 - (I) A right of first refusal to purchase the motor vehicle dealer; or
 - (II) An option to purchase the motor vehicle dealer;
- (aa) (I) To use an unreasonable, arbitrary, or unfair performance standard in determining a motor vehicle dealer's compliance with a franchise agreement;

(II) To fail to communicate, upon the request of the dealer, any performance standard in a clear and concise writing to a motor vehicle dealer before applying the standard to the motor vehicle dealer.
- (2) It is unlawful for any person to act as a motor vehicle dealer, manufacturer, distributor, wholesaler, manufacturer representative, used motor vehicle dealer, buyer agent, wholesale motor vehicle auction dealer, or motor vehicle salesperson unless the person has been duly licensed under this part 1, except for:

 - (a) Persons exempt from licensure as a manufacturer under section 12-6-102 (15); however, manufacturers exempt from licensing shall comply with all other applicable

requirements for manufacturers, including those pertaining to vehicle identification numbers and manufacturers' statements of origin; and

- (b) Business owners selling a vehicle if the vehicle has been owned for more than one year, the vehicle has been used exclusively for business purposes, the vehicle is titled in the name of the business, all applicable taxes related to the vehicle have been paid, and the total number of vehicles sold by a business owner over a two-year period does not exceed twenty vehicles.
- (3) It is unlawful and a violation of this part 1 for a buyer's agent to engage in the following:
- (a) To make a material misstatement in an application for a license;
 - (b) To willfully fail to perform or cause to be performed any written agreement with respect to any motor vehicle or parts thereof;
 - (c) To defraud any buyer, seller, motor vehicle salesperson, or financial institution;
 - (d) To intentionally enter into a financial agreement with a seller of a motor vehicle for the buyer agent's own benefit;
 - (e) To coerce any motor vehicle dealer into providing installment financing with a specified financial institution.

12-6-120.3. New, reopened, or relocated dealer - notice required - grounds for refusal of dealer license - definitions - rules

- (1) No manufacturer shall establish an additional motor vehicle dealer, reopen a previously existing motor vehicle dealer, or authorize an existing motor vehicle dealer to relocate without first providing at least sixty days' notice to all of its franchised dealers within whose relevant market area the new, reopened, or relocated dealer would be located. The notice must state:
- (a) The specific location at which the additional, reopened, or relocated motor vehicle dealer will be established;
 - (b) The date on or after which the manufacturer intends to be engaged in business with the additional, reopened, or relocated motor vehicle dealer at the proposed location; and
 - (c) The identity of all motor vehicle dealers who are franchised to sell the same line-make of vehicles with licensed locations in the relevant market area where the additional, reopened, or relocated motor vehicle dealer is proposed to be located.
 - (d) Repealed.
- (1.5) A manufacturer shall approve or disapprove of a motor vehicle dealer facility initial site location, relocation, or reopening request within sixty days after the request or after sending the notice required by subsection (1) of this section to all of its franchised dealers, whichever is later.
- (2) Subsection (1) of this section shall not apply to:

- (II) The relevant vehicle buyer profiles;
 - (III) The relevant historical new motor vehicle registrations for the line-make of vehicles versus the manufacturer's actual competitors in the relevant market area;
 - (IV) Whether the opening of the proposed additional, reopened, or relocated motor vehicle dealer is materially beneficial to the public interest or the consumers in the relevant market area;
 - (V) Whether the motor vehicle dealers of the same line-make in the relevant market area are providing adequate representation and convenient customer care, including the adequacy of sales and service facilities, equipment, parts, and qualified service personnel, for motor vehicles of the same line-make in the relevant market area;
 - (VI) The reasonably expected market penetration of the line-make, given the factors affecting penetration; and
 - (VII) Whether the additional, reopened, or relocated dealership is reasonable and justifiable based on expected economic and market conditions within the relevant market area.
- (d) In any court or administrative action, the motor vehicle dealer has the burden of proof on each of the following issues:
- (I) Whether the manufacturer has engaged in any action or omission that, directly or indirectly, denied the existing motor vehicle dealer of the same line-make the opportunity for reasonable growth or market expansion;
 - (II) Whether the manufacturer has coerced or attempted to coerce any existing motor vehicle dealer or dealers into consenting to additional or relocated franchises of the same line-make in the community or territory or relevant market area; and
 - (III) The size and permanency of the investment of and obligations incurred by the existing motor vehicle dealers of the same line-make located in the relevant market area.
- (e) (I) In a legal or administrative action challenging the relocating, reopening, or addition of a motor vehicle dealer, the district court or administrative law judge shall make a determination of whether the relocation, reopening, or addition of a motor vehicle dealer is, based on the factors identified in subsections (6)(c) and (6)(d) of this section:
- (A) In the public interest; and
 - (B) Fair and equitable to the existing motor vehicle dealers.

- (II) The district court or the executive director shall deny any proposed relocating, reopening, or addition of a motor vehicle dealer unless the manufacturer shows by a preponderance of the evidence that the existing motor vehicle dealer or dealers of the same line-make in the relevant market area of the proposed dealership are not providing adequate representation of the line-make motor vehicles. A determination to deny, prevent, or enjoin the relocating, reopening, or addition of a motor vehicle dealer is effective for at least eighteen months.

12-6-120.5. Independent control of dealer – definitions

- (1) Except as otherwise provided in this section, no manufacturer shall own, operate, or control any motor vehicle dealer or used motor vehicle dealer in Colorado.
- (2) Notwithstanding subsection (1) of this section, the following activities are not prohibited:
 - (a)
 - (I) Except as provided in subparagraph (II) of this paragraph (a), operation of a dealer for a temporary period, not to exceed twelve months, during the transition from one owner or operator to another independent owner or operator; except that the executive director may extend the period, not to exceed twenty-four months, upon showing by the manufacturer or distributor of the need to operate the dealership for such time to achieve a transition from an owner or operator to another independent third-party owner or operator;
 - (II) Operation of a dealer that sells recreational vehicles for not more than eighteen months during the transition from one owner or operator to another independent owner or operator;
 - (b) Ownership or control of a dealer while the dealer is being sold under a bona fide contract or purchase option to the operator of the dealer;
 - (c) Participation in the ownership of the dealer solely for the purpose of providing financing or a capital loan that will enable the dealer to become the majority owner of the dealer in less than seven years;
 - (d) Operation of a motor vehicle dealer if the manufacturer has no other dealers of the same line-make in this state;
 - (e) Ownership, operation, or control of a used motor vehicle dealer if the manufacturer owned, operated, or controlled the used motor vehicle dealer on January 1, 2009, and has continuously operated or controlled the used motor vehicle facilities after January 1, 2009; and
 - (f) Operation of a motor vehicle dealer if the manufacturer was operating the dealer on January 1, 2009, so long as the dealer is in continuous operation after January 1, 2009.
- (3) As used in this section:

- (a) "Control" means to possess, directly, the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract, or otherwise; except that "control" does not include the relationship between a manufacturer and a motor vehicle dealer under a franchise agreement.
 - (b) "Manufacturer" means a motor vehicle manufacturer, distributor, or manufacturer representative.
 - (c) "Operate" means to directly or indirectly manage a motor vehicle dealer.
 - (d) "Own" means to hold any beneficial ownership interest of one percent or more of any class of equity interest in a dealer, whether as a shareholder, partner, limited liability company member, or otherwise. To "hold" an ownership interest means to have possession of, title to, or control of the ownership interest, either directly or through a fiduciary or agent.
- (4) This section shall not apply to manufacturers of vehicles with a passenger capacity of thirty-two or more.

12-6-120.7. Successor under existing franchise agreement - duties of manufacturer

- (1) If a licensed motor vehicle dealer under franchise by a manufacturer dies or becomes incapacitated, the manufacturer shall act in good faith to allow a successor, which may include a family member, designated by the deceased or incapacitated motor vehicle dealer to succeed to ownership and operation of the dealer under the existing franchise agreement if:
- (a) Within ninety days after the motor vehicle dealer's death or incapacity, the designated successor gives the manufacturer written notice of an intent to succeed to the rights of the deceased or incapacitated motor vehicle dealer in the franchise agreement;
 - (b) The designated successor agrees to be bound by all of the terms and conditions of the existing franchise agreement; and
 - (c) The designated successor meets the criteria generally applied by the manufacturer in qualifying motor vehicle dealers.
- (2) A manufacturer may refuse to honor the existing franchise agreement with the designated successor only for good cause. The manufacturer may request in writing from a designated successor the personal and financial data that is reasonably necessary to determine whether the existing franchise agreement should be honored, and the designated successor shall supply such data promptly upon request.
- (3) (a) If a manufacturer believes that good cause exists for refusing to honor the requested succession, the manufacturer shall send the designated successor, by certified or overnight mail, notice of its refusal to approve the succession within sixty days after the later of:

- (I) Receipt of the notice of the designated successor's intent to succeed the motor vehicle dealer in the ownership and operation of the dealer; or
 - (II) The receipt of the requested personal and financial data.
 - (b) Failure to serve the notice pursuant to paragraph (a) of this subsection (3) shall be considered approval of the designated successor, and the franchise agreement is considered amended to reflect the approval of the succession the day following the last day of the notice period specified in said paragraph (a).
 - (c) If the manufacturer gives notice of refusal to approve the succession, such notice shall state the specific grounds for the refusal and shall state that the franchise agreement shall be discontinued not less than ninety days after the date the notice of refusal is served unless the proposed successor files an action in the district court to enjoin such action.
- (4) This section shall not be construed to prohibit a motor vehicle dealer from designating a person as the successor in advance, by written instrument filed with the manufacturer. If the motor vehicle dealer files such an instrument, that instrument governs the succession rights to the management and operation of the dealer subject to the designated successor satisfying the manufacturer's qualification requirements as described in this section.
- (5) This section shall not apply to manufacturers of vehicles with a passenger capacity of thirty-two or more.

12-6-121. Penalty

- (1) Except as provided in subsection (2) of this section, any person who willfully violates this part 1 or who willfully commits any offense in this part 1 declared to be unlawful commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501.
- (2) (a) Any person who willfully violates section 12-6-120 (2) by acting as a manufacturer, distributor, or manufacturer representative without proper authorization commits a class 3 misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars or more than one thousand dollars for each separate offense; except that, if the violator is a corporation, the fine shall be not less than five hundred dollars or more than two thousand five hundred dollars for each separate offense. A second conviction shall be punished by a fine of two thousand five hundred dollars.
- (b) Any person who willfully violates section 12-6-120 (2) by acting as a motor vehicle dealer, wholesaler, used motor vehicle dealer, buyer agent, wholesale motor vehicle auction dealer, or motor vehicle salesperson without proper authorization commits a class 3 misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one thousand dollars and a penalty of twenty-five hours of useful public

service, neither of which the court may suspend, for each separate offense; except that, if the violator is a corporation, the corporation shall be punished by a fine of not less than five thousand dollars nor more than twenty-five thousand dollars for each separate offense. A second conviction for an individual shall be punished by a fine of not less than five thousand dollars nor more than twenty-five thousand dollars for each separate offense, which the court may not suspend.

12-6-121.5. Fines - disposition - unlicensed sales

Of any fine collected for a violation of section 12-6-120 (2), half shall be awarded to the law enforcement agency that investigated and issued the citation for the violation and half shall be credited to the auto dealers license fund created in section 12-6-123.

12-6-121.6. Drafts not honored for payment – penalties

- (1) If a motor vehicle dealer, wholesaler, or used motor vehicle dealer issues a draft or check to a motor vehicle dealer, wholesaler, used motor vehicle dealer, motor vehicle auction house, or consignor and fails to honor such draft or check, then the license of such licensee shall be subject to suspension pursuant to section 12-6-104 (3)(e)(l). The license suspension shall be effective upon the date of any final decision against such licensee based upon the unpaid draft or check. A licensee whose license has been suspended pursuant to the provisions of this subsection (1) shall not be eligible for reinstatement of such license and shall not be eligible to apply for any other license issued under this part 1 unless it is demonstrated to the board that the unpaid draft or check has been paid in full and that any fine imposed on the licensee pursuant to subsection (2) of this section has been paid in full.
- (2) Any motor vehicle dealer, wholesaler, or used motor vehicle dealer which issues a draft or check to a motor vehicle dealer, wholesaler, used motor vehicle dealer, motor vehicle auction house, or consignor and who fails to honor such draft or check, causing loss to a third party, commits a misdemeanor and shall be punished by a fine of two thousand five hundred dollars. Any fine collected for a violation of this subsection (2) shall be awarded to the law enforcement agency which investigated and issued the citation for said violation.

12-6-122. Right of action for loss

- (1) If any person suffers loss or damage by reason of any fraud practiced on such person or fraudulent representation made to such person by a licensed dealer or one of the dealer's salespersons acting for the dealer on such dealer's behalf or within the scope of the employment of the salesperson or suffers any loss or damage by reason of the violation by such dealer or salesperson of any of the provisions of this part 1 that are designated by the board by rule, whether or not such violation is the basis for denial, suspension, or revocation of a license, such person shall have a right of action against the dealer, such dealer's motor vehicle salespersons, and the sureties upon their respective bonds. The right of a person to recover for

loss or damage as provided in this subsection (1) against the dealer or salesperson shall not be limited to the amount of their respective bonds.

- (2) If any person suffers any loss or damage by reason of any unlawful act as provided in section 12-6-120 (1)(a), such person shall have a right of action against the manufacturer, distributor, or manufacturer representative. In any court action wherein a manufacturer, distributor, or manufacturer representative has been found liable in damages to any person under this part 1, the amount of damages so determined shall be trebled and shall be recoverable by the person so damaged. Any person so damaged shall also be entitled to recover reasonable attorney fees as part of his or her damages.
- (3) If any licensee suffers any loss or damage because of a violation of section 12-6-120 (1), the licensee shall have a right of action against the manufacturer, distributor, or manufacturer representative. In any court action wherein a manufacturer, distributor, or manufacturer representative has been found liable in damages to any licensee under this part 1, any licensee so damaged shall also be entitled to recover reasonable attorney fees and costs as part of his or her damages.

12-6-122.5. Contract disputes - venue - choice of law

- (1) In the event of a dispute between a motor vehicle dealer and a manufacturer under a franchise agreement, notwithstanding any provision of the agreement to the contrary:
- (a) At the option of the motor vehicle dealer, venue shall be proper in the county or judicial district where the dealer resides or has its principal place of business; and
 - (b) Colorado law shall govern, both substantively and procedurally.

12-6-123. Disposition of fees - auto dealers license fund - created

- (1) All money received under this part 1, except fines awarded pursuant to sections 12-6-121.5 and 12-6-121.6 (2), shall be deposited with the state treasurer by the department of revenue, subject to section 24-35-101, together with a detailed statement of such receipts, and the money deposited with the state treasurer constitutes a fund to be known as the auto dealers license fund, which fund is hereby created. The fund shall be used under the direction of the board in the following manner:
- (a) Repealed.
 - (b) (I) For the payment of the expenses of the administration of the board as the general assembly deems necessary by making an appropriation therefor on an annual fiscal-year basis commencing July 1, 1971, and thereafter.
 - (II) Any money remaining in said fund on December 31, 1971, and at the close of each calendar year thereafter, after costs of administration of the law as provided in this part 1 shall remain in the auto dealers license fund to be used

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for educational and enforcement purposes as appropriated by the general assembly.

- (c) To pay the department of revenue for the administration of actions or proceedings brought before the executive director pursuant to section 12-6-120.
 - (d) To enforce section 12-6-120 (2).
- (2) Repealed.

12-6-124. Repeal of article. (Repealed)

12-6-125. Advertisement - inclusion of dealer name

A motor vehicle dealer or used motor vehicle dealer or any agent of the dealers shall not advertise any offer for the sale, lease, or purchase of a motor vehicle or a used motor vehicle that creates the false impression that the vehicle is being offered by a private party or by a buyer's agent or that does not contain the name of the dealer or the word "dealer" or, if the name is contained in the offer and does not clearly reflect that the business is a dealer, both the name of the dealer and the word "dealer".

12-6-126. Audit reimbursement limitations - dealer claims

- (1)
 - (a) A manufacturer, distributor, or manufacturer representative shall have the right to audit warranty, sales, or incentive claims of a motor vehicle dealer for nine months after the date the claim was submitted.
 - (b) A manufacturer, distributor, or manufacturer representative shall not require documentation for warranty, sales, or incentive claims or audit warranty, sales, or incentive claims of a motor vehicle dealer more than fifteen months after the date the claim was submitted, nor shall the manufacturer require a charge back, reimbursement, or credit against a future transaction arising out of an audit or request for documentation arising more than nine months after the date the claim was submitted.
- (2) The motor vehicle dealer shall have nine months after making a sale or providing service to submit warranty, sales, or incentive claims to the manufacturer, distributor, or manufacturer representative.
- (3) Subsection (1) of this section shall not limit any action for fraud instituted in a court of competent jurisdiction.
- (4) A motor vehicle dealer may request a determination from the executive director, within thirty days, that a charge back, reimbursement, or credit required violates subsection (1) of this section. If a determination is requested within the thirty-day period, then the charge back, reimbursement, or credit shall be stayed pending the decision of the executive director. If the

executive director determines after a hearing that the charge back, reimbursement, or credit violates subsection (1) of this section, the charge back, reimbursement, or credit shall be void.

12-6-127. Reimbursement for right of first refusal

A manufacturer or distributor shall pay reasonable attorney fees, not to exceed the usual and customary fees charged for the transfer of a franchise, and reasonable expenses that are incurred by the proposed owner or transferee before the manufacturer or distributor exercised its right of first refusal in negotiating and implementing the contract for the proposed change of ownership or the transfer of assets. Payment of attorney fees and expenses is not required if the claimant has failed to submit an accounting of attorney fees and expenses within twenty days after the receipt of the manufacturer's or dealer's written request for an accounting. An expense accounting may be requested by the manufacturer or distributor before exercising its right of first refusal.

12-6-128. Payout exemption to execution

A motor vehicle dealer's right to receive payments from a manufacturer or distributor required by section 12-6-120 (1)(l) and (1)(r) is not liable to attachment or execution and may not otherwise be seized, taken, appropriated, or applied in a legal or equitable process or by operation of law to pay the debts or liabilities of the manufacturer or distributor. This section shall not prohibit a secured creditor from exercising rights accrued pursuant to a security agreement if the right arose as a result of the manufacturer or distributor voluntarily creating a security interest before paying existing debts or liabilities of the manufacturer or distributor. This section shall not prohibit a manufacturer or distributor from withholding a portion of such payments necessary to cover an amount of money owed to the manufacturer or distributor as an offset to such payments if the manufacturer or distributor provides the motor vehicle dealer written notice thereof.

12-6-129. Site control extinguishes

If a manufacturer, distributor, or manufacturer representative has terminated, eliminated, or not renewed a franchise agreement containing a site control provision, the motor vehicle dealer may void a site control provision of a franchise agreement by returning any money the dealer has accepted in exchange for site control prorated by the time remaining before the agreement expires over the time period between the agreement being signed and the agreement expiring. This section does not apply if the termination, elimination, or nonrenewal is for just cause in accordance with section 12-6-120 (1)(d).

12-6-130. Modification voidable

If a manufacturer, distributor, or manufacturer representative fails to comply with section 12-6-120 (1)(w)(II), the motor vehicle dealer may void the modification or replacement of the franchise agreement.

12-6-131. Termination appeal

- (1) A motor vehicle dealer who has reason to believe that a manufacturer, distributor, or manufacturer representative has violated section 12-6-120 (1)(d) or (1)(w) may appeal to the board by filing a complaint with:
 - (a) The executive director; or
 - (b) A district court if neither the executive director nor the administrative law judge, appointed in accordance with this section, holds a hearing concerning the complaint within sixty days after the complaint was filed.
- (2) Upon filing of a verified complaint alleging with specific facts that a violation has occurred under this section, the termination, elimination, modification, or nonrenewal of the franchise agreement is automatically stayed, without the motor vehicle dealer posting a bond, until a final determination is made on each issue raised in the complaint; except that the executive director, administrative law judge, or court may cancel the stay upon finding that the cancellation, termination, or nonrenewal of the franchise agreement was for any of the reasons specified in section 12-6-120 (1)(d)(III). The automatic stay maintains all rights under the franchise agreement until the final determination of the issues raised in the verified complaint. The manufacturer, distributor, or manufacturer representative shall not name a replacement motor vehicle dealer for the market or location until a final order is entered.
- (3) If a verified complaint is filed with the executive director, the executive director shall refer the complaint to an administrative law judge with the office of administrative courts for final agency action.
- (4) In resolving a termination complaint, the manufacturer, distributor, or manufacturer representative has the burden of proving any claim made that the factors listed in section 12-6-120 (1)(d)(II) apply to the termination, cancellation, or nonrenewal.
- (5) The prevailing party in a claim that a termination, cancellation, or nonrenewal violates section 12-6-120 (1)(d) or (1)(w) is entitled to recover attorney fees and costs, including expert witness fees, incurred in the termination protest.

12-6-132. Stop-sale directives - used motor vehicles – definitions

- (1) As used in this section, unless the context otherwise requires:
 - (a) "Average trade-in value" means the value of a used motor vehicle as established by a generally accepted, published, third-party used vehicle resource.
 - (b) "Stop-sale directive" means an unconditional directive from a manufacturer or distributor to a motor vehicle dealer to stop selling a type of motor vehicle manufactured by the manufacturer or distributed by the distributor because of a safety defect.

- (2)** A manufacturer or distributor shall reimburse a motor vehicle dealer in accordance with subsection (3) of this section if:
- (a)** The manufacturer or distributor issues a stop-sale directive for a motor vehicle manufactured or distributed by the issuer of the stop-sale directive;
 - (b)** The motor vehicle dealer holds an active sales, service, and parts agreement with the manufacturer or distributor for the line-make of the used motor vehicle covered by the stop-sale directive;
 - (c)** The used motor vehicle covered by the stop-sale directive is held in the inventory of the motor vehicle dealer on the date the stop-sale directive is issued or taken by the dealer as a trade-in vehicle on a consumer purchase of the same line-make; and
 - (d)** The manufacturer or distributor has not provided a remedy procedure or made parts available to repair the used motor vehicle for more than thirty days after the stop-sale directive is issued.
- (3)** If the conditions in subsection (2) of this section are met, the manufacturer or distributor shall, upon application by the motor vehicle dealer, pay or credit the dealer one and one-half percent per month of the average trade-in value of the used motor vehicle's model prorated from thirty days after the stop-sale directive was issued to the earlier of:
- (a)** The date when the manufacturer or distributor provides the motor vehicle dealer with a remedy procedure and any necessary parts for ordering to repair the used motor vehicle; or
 - (b)** The date the motor vehicle dealer transfers the motor vehicle.
- (4)** A manufacturer or distributor may determine a reasonable manner and method required for a motor vehicle dealer to demonstrate the inventory status of a used motor vehicle to determine eligibility for reimbursement.
- (5)**
- (a)** This section applies only to used motor vehicles.
 - (b)** This section is not intended to prevent a manufacturer or distributor from requiring that a motor vehicle not be subject to an open recall or stop-sale directive for the motor vehicle to be qualified or sold as a certified preowned vehicle or substantially similar designation.
 - (c)** This section does not require a manufacturer or distributor to provide total compensation to a motor vehicle dealer that would exceed the total average trade-in valuation of the affected used motor vehicle.
 - (d)** This section does not preclude a motor vehicle dealer and a manufacturer or distributor from agreeing to reimbursement terms that differ from those specified in this section.
 - (e)** Compensation provided to a motor vehicle dealer under this section is exclusive and may not be combined with any other remedy under state or federal law.

12-6-133. Repeal of part

This part 1 is repealed, effective September 1, 2027. Before its repeal, this part 1 is scheduled for review in accordance with section 24-34-104.

12-6-301. Definitions

As used in this part 3, unless the context otherwise requires:

- (1) "Motor vehicle" means every self-propelled vehicle intended primarily for use and operation on the public highways and every vehicle intended primarily for operation on the public highways which is not driven or propelled by its own power, but which is designed either to be attached to or become a part of a self-propelled vehicle; it does not include farm tractors and other machines and tools used in the production, harvesting, and care of farm products.

12-6-302. Sunday closing

No person, firm, or corporation, whether owner, proprietor, agent, or employee, shall keep open, operate, or assist in keeping open or operating any place or premises or residences, whether open or closed, for the purpose of selling, bartering, or exchanging or offering for sale, barter, or exchange any motor vehicle, whether new, used, or secondhand, on the first day of the week commonly called Sunday. This part 3 shall not apply to the opening of an establishment or place of business on the said first day of the week for other purposes, such as the sale of petroleum products, tires, or automobile accessories, or for the purpose of operating and conducting a motor vehicle repair shop, or for the purpose of supplying such services as towing or wrecking. The provisions of this part 3 shall not apply to the opening of an establishment or place of business on the said first day of the week for the purpose of selling, bartering, or exchanging or offering for sale, barter, or exchange any boat, boat trailer, snowmobile, or snowmobile trailer.

12-6-303. Penalties

Any person, firm, partnership, or corporation who violates any of the provisions of this part 3 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than seventy-five dollars nor more than one thousand dollars, or by imprisonment in the county jail for not more than six months, or the court, in its discretion, may suspend or revoke the Colorado motor vehicle dealer's license issued under the provisions of part 1 of this article, or by such fine and imprisonment and suspension or revocation.